

## PENDING LEGISLATION

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
WATER AND POWER  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

ON

<b>S. 440</b>	<b>S. 1012</b>
<b>S. 677</b>	<b>S. 1029</b>
<b>S. 685</b>	<b>S. 1030</b>
<b>S. 930</b>	

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JUNE 14, 2017

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The text for each of the bills which were addressed in this hearing can be found on the Committee's website at: <https://www.energy.senate.gov/public/index.cfm/2017/6/subcommittee-legislative-hearing-to-receive-testimony-on-various-bills>.



## **PENDING LEGISLATION**

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**WEDNESDAY, JUNE 14, 2017**

U.S. SENATE,  
SUBCOMMITTEE ON WATER AND POWER,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:25 p.m. in Room SD-366, Dirksen Senate Office Building, Hon. John Hoeven, presiding.

### **OPENING STATEMENT OF HON. JOHN HOEVEN, U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN [presiding]. This hearing will come to order. This is a hearing of the Energy and Natural Resources Subcommittee on Water and Power.

I am joined by Senator King, the Ranking Member, and also Senator Heinrich. Thank you both for being here.

I am filling in, of course, for Senator Jeff Flake, who is the Chairman on this Subcommittee. For obvious reasons, he is unable to be here. He, his family and our other associates, certainly Representative Scalise and the staff are tremendous. The U.S. Capitol Police and all law enforcement are in our thoughts and prayers during this very sobering day here on Capitol Hill.

We thank all of you for being with us. There is a vote going on, which is not unusual around here. There is always a lot, it seems, going on at the same time. We will have people coming and going based on that vote, but we will go ahead and proceed with the hearing. We know, in some cases, that you had to come back due to schedule changes in earlier hearings. We apologize for the fact that you had to come back, but we appreciate it very much and thank you again for being here.

The purpose of today's hearing is to receive testimony on seven bills pending before the Subcommittee, and I am Chairing, as I said, in place of Senator Flake.

The jurisdiction of the Subcommittee ranges from the Bureau of Reclamation, agencies that market federal hydropower, and our Ranking Member just informed me that he was formerly in the federal hydropower business so I would think he has a very good perspective on it. Of course, the Subcommittee's jurisdiction also covers the Bureau of Reclamation projects throughout the Great Plains, dams in the Pacific Northwest and hydropower facilities in the Northeast.

After the unfortunate cancellation of this hearing last month, today we will hear about a number of bills that cover the full range

of this Subcommittee's jurisdiction including S. 440, which is my legislation related to land surrounding Patterson Lake. I am also very pleased to have the support of my colleague from North Dakota, Senator Heitkamp, on that bill as co-sponsor.

S. 440 is a result of a lot of work by landowners, excuse me, we hope soon-to-be landowners, homeowners around Patterson Lake who have gotten together and worked in a cooperative way to come up with, what I think, is a very good, common sense solution. Our role is to help support our citizens around the country, and this is a great example of where we have that opportunity to empower them because they have been able to work together and come to a very good solution. I have had the privilege to attend some of their meetings, listen and really understand what their concept is and provide some feedback, but again, commend them on their ability to come together with a good solution.

This bill is a result of various stakeholders looking at all aspects of the land conveyance and coming to a workable solution, recognizing that it has to work not only for them but for the City of Dickinson, for Stark County where they live, the State of North Dakota and for the Federal Government who, of course, represents all of the other citizens of this great nation of more than 300 million people.

In addition to the primary water supply purpose of this project based on its original construction, the Dickinson Reservoir, which is Lake Patterson, has a public recreation purpose and lands on the south side of the reservoir were leased to individuals for part-time or full-time cabin construction. The City of Dickinson has transitioned to obtaining their drinking water from the Southwest Water Authority, but the recreation and residential uses of the contiguous lands remain a viable benefit to the citizens of Dickinson and the surrounding area.

Since 1953, the Dickinson Parks and Recreation has worked cooperatively with the Bureau of Reclamation to manage the Patterson Lake Recreational Area. Over several decades they have worked hard to increase and enhance recreational opportunities as well as support public accessibility.

I have been there and I have seen the area. It really is a beautiful area and an example of where the Federal Government coming in and actually building a dam has really created not only a beautiful lake, but just a beautiful surrounding area that is used for many purposes—not only residential but recreational and really an asset for the community and our state.

We will also hear testimony on a bipartisan bill, the Western Area Power Administration (WAPA) Transparency Act. There have been financial challenges at WAPA and they have made some progress with transparency but more needs to be done. The bill directs WAPA to continue those efforts that their customers deserve.

Also on the agenda today is the reintroduced Water Supply Permitting Coordination Act. Although we were fortunate to have healthy snowpack this year, the prolonged drought we have just experienced should illustrate the need for water storage and supply infrastructure. This bill sets out a streamlined process led by the Bureau of Reclamation to aid the construction on water supply projects.

We have two hydropower bills from Senator King that shed light on additional opportunities to produce clean, renewable hydropower and to speed up the permitting process for hydropower projects. The New Mexico delegation introduced a drought bill that we will also consider.

From the challenges of building new water supply projects across the West to the hydropower issues faced by customers from the West to Northern Maine, these bills provide a good example of the range of issues that this Subcommittee deals with.

I would now turn to Senator King for any remarks that he might like to make.

**STATEMENT OF HON. ANGUS S. KING, JR.,  
U.S. SENATOR FROM MAINE**

Senator KING. Thank you, Mr. Chairman. I am delighted to see all of you, and I thank you and appreciate your coming back so that we can hold this important hearing.

As the Chairman stated, the breadth of issues that this Committee deals with is quite broad, and it is clear from the range of witnesses here who have come from across the country to provide information that there are unique needs in each region of the country, but some common areas of agreement.

I especially want to thank Mr. Wynn for being here. Brookfield has a very large presence in Maine, where hydropower is nearly 25 percent of our total energy production. I appreciate Brookfield's perspective on the matters we are going to cover today as we talk about important hydropower issues, both in the Northeast and across the country.

I do not want to start the Subcommittee hearing without acknowledging the leadership of Senator Flake and the idea that we intend to operate in a totally bipartisan—I should say since I am neither Democrat nor Republican—non-partisan way. I look forward to working with Chairman Flake. We are already the co-sponsors of each other's bills before this Committee today.

Hydropower, I think, is often forgotten as one of America's most important energy sources and most important renewable energy sources. Conventional hydropower, as we all know it, accounts for six or seven percent, which is significant, of our total energy production in the country, and it is something that is important, both in terms of critical renewable baseload power, but also in terms of the fact that it is renewable and sustainable.

Hydropower can be expensive, however, particularly in the capital area. I think that is one of the things we are going to talk about today—that hydropower, like wind power, is capital intensive but operationally cheap. Once the capital is advertised and supported then the power is there into the indefinite future. Part of that capital cost, however, is licensing and permitting costs, and that has to be recognized as a significant part of what is, ultimately, the price of the power. Therefore, what we have to try to manage is to maximize environmental protection and environmental benefit and minimize costs and time involved so that we can achieve important renewable energy benefits from hydropower at a cost that customers can afford and also in a time that makes sense for getting these important resources on the grid.

As some of you may know, I spent some of my first professional years in the hydropower business in New England. In 1983, I worked with a small company that developed hydropower around New England. Later we did biomass and later on in my career I've done wind power and also conservation. So I may be one of the few people around here who has actually applied to the Federal Energy Regulatory Commission (FERC) for a permit—and actually, I think it was for an exemption. But I do understand the process and look forward to working with all of you and with my colleagues in order to make that process as efficient as possible while emphasizing the importance of our regulatory process in terms of environmental protection.

I have to pause at this moment and tell a story that I think some of you may appreciate. I was once working on the licensing of a hydro project somewhere in the Northeast—and I won't identify the state—but we were sitting around the table discussing this project and the head of the environmental agency was talking about his concerns about the project. It suddenly dawned on all of us sitting around the table, both staff and people working on the project, that this fellow thought that once water went into a turbine it never came out.

[Laughter.]

That we were, in fact, using up the river. It was one of those situations where nobody knows how we are going to break this to him, but we did. That is an absolutely true story.

Senator HOEVEN. Like a black hole.

Senator KING. Yes, that is right.

So, I really appreciate, again, your being here today. I look forward to your testimony and am delighted to be working on, what I consider, one of our most important energy issues.

With that, Mr. Chairman, I will turn it back to you.

Senator HOEVEN. Senator Heinrich, any opening statement you might have?

Senator HEINRICH. I think the problem was that Senator King used steam turbine.

[Laughter.]

No. I want to welcome Mr. Hamman from New Mexico who has joined us today. He's got a great perspective, having been on multiple sides of some of these issues and now represents the conservancy district but previously was at the Bureau and knows the level of cooperation and coordination it takes to solve some of these issues.

I am looking forward to hearing their testimony.

Senator HOEVEN. Alright, then we will begin the panel with Mr. Scott Cameron, the Acting Assistant Secretary for Water and Science in the Department of the Interior. We appreciate, Mr. Cameron, the work that you have been doing in the water and science function of the Department, especially on the Colorado River, and look forward to your confirmation. Go ahead and proceed.

**STATEMENT OF SCOTT CAMERON, ACTING ASSISTANT SECRETARY—WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR**

Mr. CAMERON. Mr. Chairman, Senator King, Senator Heinrich, I want to thank you, first of all, for the opportunity to testify before you today on four of the bills pending before the Subcommittee. I am Scott Cameron, Acting Assistant Secretary for Water and Science at the Department of the Interior.

In the interest of time, I will summarize the Department's views on these four bills and submit my full testimony on each bill for the record.

S. 440, as the Chairman knows, would provide a path for permitted cabin owners in the Dickinson Parks and Recreation Department to take ownership of certain federal lands in the State of North Dakota. The legislation will allow for flexible management of the lands to meet local needs and alleviate the administrative cost of oversight and management of the land.

I would like to reemphasize the Secretary's staunch commitment against the sale or wide-scale transfer of federal lands. As he stated at this Committee throughout his confirmation process, the Secretary firmly holds that our treasured public lands are to be maintained and preserved for the benefit and enjoyment of the people. The Department is quite willing to work with Congress to ensure proposals like S. 440 preserve access and recreation for future generations. My written testimony recommends a few changes to S. 440 to provide additional clarity and protections.

S. 677 directs the Secretary of the Interior to coordinate federal and state permitting processes related to the construction of new surface water storage projects on lands managed by the Interior and the U.S. Department of Agriculture.

We welcome efforts to streamline and expedite the approval of new surface water storage projects. The President's 2018 budget request includes an infrastructure initiative aiming to explore long-term reforms on how infrastructure projects are regulated, funded, delivered and maintained. In particular, the initiative acknowledges the current environmental review and permitting processes' lack of cohesiveness, often making infrastructure projects more costly, unpredictable and time-consuming, all while adding little environmental protection. This initiative dovetails into the goals set forth in S. 677. The Department supports the goals of S. 677 and recommends a few amendments which are detailed in my written statement.

S. 685 would authorize construction of the Dry-Redwater Regional Water Authority System and the Musselshell-Judith Rural Water System in the states of Montana and North Dakota. The Department supports the goals on encouraging a vibrant, rural economy and ensuring safe, reliable sources of drinking water. Given the past history and future prospects of funding for the rural water program, we are cautious not to raise unreasonable expectations for future federal funding should this bill become law. The Department has concerns about adding to the backlog of Reclamation's already-authorized rural water projects that are in queue for federal construction funding already. While the Department acknowledges the critical functions rural water projects offer to communities across

the West, we have concerns with S. 685 as written and we would like to work with the Committee to address those concerns.

Last, S. 1012 aims to enhance coordination from water acquisition, encourage water conservation, authorize and provide for studies and support efforts to provide an annual spring peak flow for the Middle Rio Grande in New Mexico. Congress has encouraged Reclamation to pursue efforts to facilitate agricultural water leasing. In response, Reclamation has started a pilot project for leasing and is planning a grant opportunity to build and begin testing the framework for a leasing program in collaboration with the Middle Rio Grande Conservancy District. S. 1012 would provide Reclamation and the District with increased flexibility to implement and effectively manage such a program. S. 1012 would authorize a National Academy of Sciences study of water and reservoir management and operation. The study would likely provide water managers along the Rio Grande in New Mexico with useful information; however, there may be ways this study can build on the work of other prior studies. The Department supports many elements of S. 1012 but has, again, a few concerns which are detailed in my written statement. We would like to work with the sponsors and the Committee to address those particular concerns.

Thank you again, Mr. Chairman and Ranking Member King, for the opportunity to present these views. I would be happy to answer questions at the appropriate time.

[The prepared statements of Mr. Cameron follow:]

**Statement of Scott Cameron  
Acting Assistant Secretary – Water and Science  
U.S. Department of the Interior  
Before the  
Committee on Energy and Natural Resources  
Water and Power Subcommittee  
On**

**S. 440, a bill to establish a procedure for the conveyance of certain Federal property  
around the Dickinson Reservoir in the State of North Dakota.**

**June 14, 2017**

Chairman Flake, Ranking Member King, and members of the Subcommittee, I am Scott Cameron, Acting Assistant Secretary for Water and Science at the Department of the Interior. Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 440, a bill to establish a procedure for the conveyance of certain Federal property around the Dickinson Reservoir in the State of North Dakota. The intent of the legislation is to provide a path for current permitted cabin owners and the Dickinson Parks and Recreation Department to take ownership of certain Federal lands, allowing flexible management of the lands to meet local needs and alleviate the administrative oversight and management of the land.

Before I discuss our views on S. 440, I wanted to note the Secretary's staunch commitment against the wide-scale sale or transfer of federal lands. He firmly holds that our treasured public lands are to be maintained and preserved according to the inscription on the Yellowstone National Park Arch that reads 'for the benefit and enjoyment of the people.' The Secretary is willing to work with Congress to ensure proposals of this nature preserve access and recreation for future generations to come. Therefore, we recommend the following changes to provide additional clarity and protections.

The Flood Control Act of 1944 authorized construction of Dickinson Dam and Reservoir (Project) as part of the Dickinson Unit, Heart Division, Pick-Sloan Missouri Basin Program. Federal lands were acquired for Project purposes which include municipal water supply, irrigation with flood control, and recreation benefits. The Project provided municipal water to the City of Dickinson until 1991 when the City switched its water supply to the Southwest Pipeline Project. There are currently two water service contracts associated with the Project, one with Dickinson Parks and Recreation and one with an irrigation district downstream of the Reservoir.

The current management agreement between Reclamation and Dickinson Parks and Recreation for operation and maintenance of the majority of lands around the Reservoir includes the area for 41 permitted exclusive use cabins occupied year round (approximately 25 acres) as well as additional lands dedicated to recreation, and wildlife management (approximately 2,434 acres). In addition to lands managed by Dickinson Parks and Recreation, Reclamation leases a 10 acre parcel to the North Dakota Game and Fish Department (NDG&F) for the Southwest District Headquarters. In 2013, Reclamation's Dakotas Area Office (DKAO) requested a fair market

appraisal of the rates for the exclusive use cabins be conducted pursuant to the Code of Federal Regulations related to Use of Bureau of Reclamation Land, Facilities, and Waterbodies (43 CFR 429). As required by Department policy, the appraisals were conducted by the Department of the Interior's Office of Valuation Services for all reservoirs with exclusive use under the administration of DKAO, resulting in the need to raise rates at all areas to recover fair market value. The results of the appraisal were presented to the respective managing partners in 2016.

Section 1(b) of S. 440 would provide for conveyance of land permitted to cabin owners and land managed by Dickinson Parks and Recreation. However, some Project land is not included in the Management Agreement with Dickinson Parks and Recreation (i.e., 10 acres currently under lease to NDG&F) and is not included in the legislation. This would result in fractionated ownership with continued Reclamation oversight responsibilities and costs. The Department will work with the sponsor of the bill and the Committee to revise the language to include those lands acquired for the Project with the exception of the footprint of the Dam, auxiliary spillway, and any realty interest necessary to operate and maintain the Dam.

Section 1(b) of S. 440 would also allow permittees two years following the date of enactment of this legislation to purchase a property. The Department has concerns with the timeline in the legislation as drafted given that surveys of land could take up to two years to complete. A third party appraisal, which can take a year or longer to complete, can only begin once the survey is complete. Once the appraised value is determined, additional time may be required for the permittee to seek financing or resolve any appraisal disputes if necessary. The Department recommends that permittees be allowed up to five years or "as reasonably practicable after enactment of the Act" to allow sufficient time for the pre-sale activities and to arrange financing.

Section 1(b)(2)(A) of S. 440 provides for the fair market value of a property to be determined by a local, third party appraiser, valuing the property as unimproved residential property, excluding all improvements. A third party appraisal would involve a contract between the permittee and the appraiser with the permittee responsible for direct payment to the appraiser. If Reclamation were to pay for the appraisal upfront, the contract would shift to an agreement between the United States and the appraiser, meaning it would no longer comply with the language in S. 440 as currently drafted. The Department recommends clarification of this language to ensure that permittees understand the cost requirement. The Department recommends that Section 1(b)(2)(A) be revised so that the fair market value of a property shall be determined by an appraiser using the Office of Valuation Services' third party appraisal process, valuing the property as unimproved residential property, excluding all improvements. The Department also recommends that the bill be amended to include a requirement for review of the third party appraisal by the Office of Valuation Services as specified in section 2201.4 of title 43, Code of Federal Regulations (or successor regulations) to ensure that the third party appraisal credibly represents the fair market value of the property being conveyed. The Department further recommends that all costs paid for by the permittee shall have no effect on the appraised value and the cost for the third party appraisal shall be the responsibility of the permittee.

Section 1(b)(4) provides for the transfer of Federal land currently managed by Dickinson Parks and Recreation, without cost, subject to the requirements in Section 1(c) with no protections



required to ensure lands acquired for public purpose will remain available for public use in the future. The Department recommends that the deed transferring land to Dickinson Parks and Recreation shall provide that all property transferred to Dickinson Parks and Recreation be used and maintained for public access and recreation purposes. Currently, opportunities to recreate within this area include walking trails, boating ramps, golfing, and modern and primitive camping. According to Dickinson Parks and Recreation, camping spots on the property average 2,158 rentals between mid-May and mid-September alone. Given the Secretary's firm commitment to protecting public lands, it is of critical importance that Dickinson continues to manage the parcels with recreational interests in mind. That is why the Department recommends that if the property ceases to be used or maintained for that purpose, the jurisdiction of the land would then revert back to the United States.

As drafted, S. 440 does not specifically address the land within Dickinson Parks and Recreation's Management Agreement located under the Reservoir. The Department would be happy to work with the sponsor and the Committee on language to minimize future confusion and/or oversight by the U.S. on land under the reservoir.

Section 1(c) of S. 440 provides that each conveyance pursuant to subsection (b) is made subject to two protections. The Department believes additional protections are necessary to safeguard the interests of the United States and the public to operate the dam as authorized. The Department recommends the following protections be added: the prohibition of any conveyance of subsurface or mineral rights, (2) the inclusion of language to maintain a flowage easement for flood control purposes, and the allowance for the Secretary to make necessary terms, reservations, restrictions, and conditions to safeguard the interests of the United States. The Department is willing to provide work with the Committee to amend the bill to ensure these protections are put in place.

Section 1(d) of S. 440 provides that the liability and taking provisions only apply to the permittees, not any other transfer of federal land or to any future owners. In addition to technical recommendations, the Department recommends amending the definition of Permittee in Section 1(a)(3) to include future assignees of the current owners of the cabin sites.

Section 1(e)(2) of S. 440 requires that not later than 180 days after enactment, the Secretary to provide legal descriptions to Dickinson Parks and Recreation of the land to be conveyed. This will require Reclamation to contract with a registered Land Surveyor to survey the lands and develop the legal descriptions, access, utility, and flowage easements and individual lot surveys. The Department does not believe it will be reasonable to complete this work within 180 days and suggests increasing the time to no later than 2 years or "as reasonably practicable after enactment of the Act".

Section 1(e)(3)(A) of S. 440 provides the elevation above which any new improvements can be constructed is currently listed as 2,430 feet. This elevation is incorrect and ought to be changed to 2,430.6 feet to correctly locate the design maximum water surface elevation.

Section 1(f) of S. 440 provides that any revenues from a sale of Federal land pursuant to this section shall be made available to the Secretary, without further appropriation, for the costs to the Secretary of carrying out this section. Because revenues are not generated until the properties are transferred to the permittee, the United States would need to use appropriated funds to complete the surveys and appraisals and other pre-sale activities. In previous legislation to transfer cabin properties, as well as Reclamation's process for Use Authorization requests, it is the responsibility of the permittees/requestor to pay for the required pre-sale work, including all administrative costs to convey Federal property to private individuals/beneficiaries rather than placing this burden on the United States. As written it appears the United States is responsible for the administrative costs and therefore in "net" it receives less than market value for the land.

The Department would be happy to work with the sponsor and the Committee to revise the language based on our recommendations. This concludes my written statement. I am pleased to answer questions at the appropriate time.

**Statement of Scott Cameron**  
**Acting Assistant Secretary – Water and Science U.S. Department of the Interior**  
**before the**  
**Committee on Energy and Natural Resources**  
**Subcommittee on Water and Power**  
**on**  
**S. 677, the Water Supply Permitting and Coordination Act**  
**June 14, 2017**

Chairman Flake and members of the Subcommittee, I am Scott Cameron, Acting Assistant Secretary for Water and Science at the Department of the Interior. I am pleased to provide the views of the Department of the Interior (Department) on S. 677, the Water Supply Permitting and Coordination Act.

Before I discuss our views on S. 677, I wanted to emphasize the importance of infrastructure investments in strengthening our economy and ensuring our Nation's competitiveness. The construction of infrastructure has the potential to create jobs and reduce the cost of goods and services for American families and consumers. The Department supports efforts to streamline and expedite, in a manner consistent with law, environmental reviews, and approvals for all infrastructure projects, including new surface water storage projects. Surface water storage projects are an important component of our Nation's infrastructure that create multiple benefits, including reliable water supplies, flood control, hydropower, and water quality improvements.

The Department supports the goals of S. 677, but we would like to point out that for major infrastructure projects, projects likely to exceed \$200 million in total investment, many of the concerns that the bill is intended to address are being addressed through implementation of Title 41 of the FAST Act. Title XLI creates a more efficient permitting process and offers enhanced agency coordination and transparency and predictability through tracking of project milestones on a public website. If S.677 should move forward, we recommend some amendments which we believe will aid in the coordinated implementation of the bill.

S. 677 directs the Secretary of the Interior to coordinate federal and state permitting processes related to the construction of new surface storage projects on lands managed by Interior and the U.S. Department of Agriculture (USDA). Section 3(a) of the bill would establish the Bureau of Reclamation (Reclamation) as the "lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects." Section 4 establishes deadlines and timelines for notifying and consulting with cooperating agencies, completing environmental reviews, and determining project schedules. The bill allows for contributed funds from non-federal entities, an important tool in order to allow communities to leverage federal funds to build drought resiliency.

S. 677 improves on previous legislation by appropriately limiting the scope of "qualifying projects" to new surface storage projects located in the 17 Western states where Reclamation has typically had jurisdiction under Reclamation law. We appreciate the Committee and sponsors of S. 677 working with Reclamation to revise the bill to appropriately narrow the scope of Reclamation's authority.

While S. 677 would authorize Reclamation to coordinate the review of new surface storage projects, the bill does not grant Reclamation any authority to ensure cooperating agencies meet their proposed timeframes in Section 5 or the project schedules under Section 4. We also note that there may be fewer efficiencies where Reclamation is the coordinating entity for projects on lands managed by other bureaus or USDA, where Reclamation has no action or decision authority. We look forward to working with the Committee to clarify language to ensure S. 677 achieves the sponsor's goal of streamlining the approval of surface water storage projects.

Also, Section 4(b)(4) requires Reclamation to coordinate a "unified environmental review document." We would interpret this provision as applicable to the National Environmental Policy Act process, as opposed to other permitting obligations under the Endangered Species Act, Clean Water Act or other statutes. The bill also does not include additional federal funding for these activities, which could result, at least in the case of other bureaus and USDA lands, in Reclamation diverting resources from its other programs for this activity. We would like to work with the Committee to ensure this bill reduces the time necessary to establish the merits of projects and does not establish unrealistic time frames for approval, inadvertently resulting in a decrease in favorable recommendations.

The President's 2018 budget request includes an infrastructure initiative aiming to explore long-term reforms on how infrastructure projects are regulated, funded, delivered, and maintained. In particular, the initiative acknowledges the current environmental review and permitting process lacks cohesiveness, often making infrastructure projects more costly, unpredictable, and time-consuming, all while adding little environmental protection. The Administration is looking into pilot programs to enhance the environmental review and permitting process, designate a single federal entity to coordinate between other federal agencies, and allow state and local entities to be responsible for permitting where appropriate. This initiative dovetails into the goals set forth in S. 677.

The President's infrastructure initiative applies to the permitting of new surface water storage projects. Reclamation recognizes that streamlining permitting and associated environmental reviews is necessary. However, we would be remiss not to note the importance of other factors essential to the success of new surface storage projects. Other factors include a strong base of project repayment, market conditions and economics, the presence of local consensus on the project from the community around the proposed site, and an adequate potential water market associated with the given facilities. In other cases, environmental, safety, or geologic challenges can come to light during a project's development, and create challenges for construction, completion, or operation. We continue to look at ways to streamline and expedite the approval of infrastructure projects, and in doing so, aim to quickly identify new and viable surface storage projects.

Additionally, we would like to work with the Committee on Sections 2(4), 3(b)(2) and 4(b)(4)(A) and (B), the definition of "cooperating agency," establishment of cooperating agencies, and timelines for cooperating agency approvals to ensure this definition, involvement, and timelines are consistent with established regulations (40 C.F.R. §1500-1508) and judicial interpretations. For example, it is inconsistent with the definition under the National

Environmental Policy Act (NEPA) and its implementing regulations which identify federal, Tribal, State, and local governmental entities as potential cooperating agencies and further allows those governmental entities with subject matter expertise to be designated cooperating agencies. Further, under current NEPA regulations, an agency with jurisdiction or special expertise can decline to be a cooperating agency, yet still issue a permit or other approval. Finally, we understand the intent of Section 6(c) is to prohibit the Secretary of the Interior from accepting or expending funds contributed by a non-federal entity to conduct additional reviews of permits reviewed by the pertinent Reclamation Regional Director. We look forward to working with you to ensure that intent is clear in S. 677.

In conclusion, we welcome the opportunity S. 677 provides the Department to work with this Committee to streamline and expedite the approval of new infrastructure projects. While the underlying economic issues that prevent some projects from being built remain, we look forward to working with you on meeting Reclamation's challenge of rehabilitating existing infrastructure where such decisions are warranted water and power infrastructure. Reclamation will continue to consider surface storage as one of many options to meet water demands in the West.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.

**Statement of Scott Cameron  
Acting Assistant Secretary – Water and Science  
U.S. Department of the Interior  
Before the  
Committee on Energy and Natural Resources  
Water and Power Subcommittee  
On**

**S. 685, a bill to authorize the Dry-Redwater Regional Water Authority System and the  
Musselshell-Judith Rural Water System in the States of Montana and North Dakota, and  
for other purposes.  
June 14, 2017**

Chairman Flake, Ranking Member King, and members of the Subcommittee, I am Scott Cameron, Acting Assistant Secretary for Water and Science at the Department of the Interior. Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 685, the Clean Water for Rural Communities Act, which would authorize construction of the Dry-Redwater Regional Water Authority System and the Musselshell-Judith Rural Water System in the States of Montana and North Dakota.

In the 114th Congress, Reclamation provided testimony on S. 2902 and S. 1552, which contained language identical to S. 685. My testimony today will update Reclamation's previous statements on these projects to include recent events; however, the Department's position overall on funding has not changed from these earlier testimonies.

Like the sponsors of this legislation, the Department supports the goals of encouraging a vibrant rural economy and ensuring safe, reliable sources of drinking water in Montana and North Dakota. Rural water projects help build strong, secure communities and are important to supporting the livelihood of local economies. Public Law 109-451, which expired September 30, 2016, authorized Reclamation to establish a Rural Water Supply Program to help rural communities and Tribes in the western United States analyze and develop options for meeting water supply needs through the completion of appraisal investigations and feasibility studies.

While the Department acknowledges the important functions rural water projects offer to communities across the West, we have concerns with S. 685 as currently written. We request the opportunity to work with the Committee to adequately address our concerns, as identified below.

The legislation authorizes construction of two separate projects and my statement will speak to each of those projects separately.

**Dry-Redwater**

Section 4(a)(1) of S. 685 applies to the planning, design, and construction of the regional Dry-Redwater Rural Water Authority System in eastern Montana and a small service area in northwest North Dakota, and would authorize the Federal Government to provide up to 75 percent of the System's overall construction cost. Reclamation estimates that this authorization would amount to Federal appropriations of at least \$200 million dollars. The Department last testified before this Subcommittee on legislation related to the Dry-Redwater Project in May of 2016, and

prior to that, in June 2015, May 2011, and July of 2009. Since 2016, two things have occurred; the Dry-Redwater Regional Water Authority (Authority) changed their project plans from that provided in the initial study by adding the cities of Sidney and Glendive, Montana, to the Authority's service area which changed the population served from 15,000 to over 26,500; and secondly, Reclamation's authority to continue work on rural water appraisal and feasibility studies under P.L. 109-451 expired. Reclamation did not receive a feasibility study that was evaluated and determined to be economically feasible for the new project envisioned by the Authority.

The Department is concerned about language in the legislation authorizing a project for construction without a complete Feasibility Study. Specifically, the potential strain on Reclamation's budget that could come about from this authorization, the cost share requirement proposed in the bill, and the proposed use of power from the Pick-Sloan Missouri Basin Program (P-SMBP) for non-irrigation purposes are a problematic issues.

In 2012, the Authority submitted a Feasibility Study to Reclamation for review. Upon initial review of the Feasibility Study, Reclamation was unable to identify a technically viable water supply alternative that presented a National Economic Development (NED) plan with net positive benefits to the nation. Reclamation informed the Authority that the Feasibility Study could not be supported as being financially or economically feasible under the requirements of Reclamation's Rural Water Supply Program. Consequently, there are significant review findings and recommendations that must be addressed to bring the Feasibility Study up to Reclamation's standards. Since project costs have not been fully developed by the Sponsor and reviewed by Reclamation, there is also the potential for this project to be financially unsustainable for the project sponsors.

Because of the importance of this issue, a Reclamation Design, Cost Estimating, and Construction (DEC) review further evaluated the Feasibility Study in 2012 in order to provide an independent analysis. The estimated cost to address the DEC Report Findings and Recommendations in 2012 was in excess of \$5.5 million. Neither Reclamation nor the Authority had sufficient funding to revise the Feasibility Study to address the DEC Report Findings. The authority for Reclamation to further review the feasibility study expired in 2016. In order to maintain their original service area and related project benefits, the Authority ruled out a scaled down approach.

As a result of this decision, Reclamation entered into a Memorandum of Understanding (MOU) with the Authority on April 27, 2015, with the objective of completing a summary report that documented the current status of the draft Feasibility Study and identified the additional level of effort needed to revise the Feasibility Study technically in order to meet the requirements of Reclamation's Rural Water Supply Program. However, before a final summary report could be completed, Reclamation's authority under the program expired and Reclamation was required to generate a Feasibility Study Concluding Report (Concluding Report) since the Feasibility Study was not completed. The Concluding Report was completed in September 2016 and provided an overview of the Feasibility Study up to the point of concluding it, and identified the reasons for ending the Feasibility Study. The Concluding Report provided findings that primarily due to the economics of the proposed alternative and the incomplete level of the Feasibility Study, Reclamation is not in a position to support the project as financially viable or able to verify that

the total project cost estimate is economically sound.

The Department is also concerned about the non-Federal cost share for the System. As stated above, S. 685 contemplates that the United States would fund 75 percent of the cost of constructing the System for the benefit of Montana citizens of Dawson, Garfield, McCone, Prairie, Richland Counties, and North Dakota citizens of McKenzie County. While this has been the cost share level proposed in other rural water projects enacted into law, it represents the maximum Federal cost share previously allowed under Title I of the Rural Water Supply Act of 2006 (PL 109-451, now expired), which included a requirement for a Feasibility Report that comprised an analysis of the sponsor's capability-to-pay and identified an appropriate contribution by the local sponsors.

Section 5 of S. 685 authorizes the delivery of 1.5 megawatts of P-SMBP pumping power to be used and delivered between May 1 and October 31 for the benefit of this System at the firm power rate. Section 5(b)(2)(A) of the bill requires that the System be operated on a "not-for-profit basis" in order to be eligible to receive power under those terms. Reclamation is not certain of the impact the bill's requirements could have on Western Area Power Administration's existing contractual power obligations. In addition to those concerns mentioned above, we have yet to verify whether or not water rights issues associated with the System have been adequately addressed.

Reclamation's authority to continue work on rural water appraisal and feasibility studies has expired. At this time, there is no general programmatic authority for continued work by Reclamation on rural water appraisal and feasibility studies. Reclamation's review of Dry--Redwater Authority's proposed system was conducted under the authority of the Rural Water Supply Act of 2006 (Title I of Public Law 109-451) and this authority expired on September 30, 2016. Reclamation generated a Concluding Report which provided an overview of the Feasibility Study up to the point of concluding it and identified the reasons for ending the study.

If legislative authority is granted, we suggest System sponsors work with Reclamation to evaluate the System for scale and economic viability in an effort to refine the National Economic Development accounting such that the ratio of total benefits exceeds costs. The System should meet appropriate guidelines and be updated to include new infrastructure required to accommodate the large increase in population served. S.685 allows the Authority to acquire property and existing systems. Details of these systems should be fully identified and incorporated into the new evaluation and the evaluation should incorporate recommendations from the DEC review or, if necessary, require a new DEC review be conducted. It should address all federal environmental compliance activities. There are substantial costs believed to be in the millions of dollars associated with these efforts that are outside of any costs projections previously considered. We also recommend that they work with the Western Area Power Administration and their contractors on the issues related to the System's pumping power needs.

#### **Musselshell-Judith**

Section 4(a)(2) of S. 685 would authorize the planning, design, and construction of the Musselshell-Judith Rural Water System in central Montana and would authorize appropriations



of 75 percent of total project costs. Since the total estimated construction cost of the project is \$87,102,000, Reclamation estimates that the total Federal contribution of 75 percent would equate to \$65,327,000 (2014 dollars). While a 75 percent cost share level has been proposed in other rural water projects enacted into law, this represents the maximum Federal cost share previously allowed under the Rural Water Supply Act of 2006.

In 2015, the Central Montana Rural Water Authority's (Authority) Musselshell-Judith Rural Water System Feasibility Study (Feasibility Study) was submitted to Reclamation for technical review under Public Law 109-451. The Department found the proposed project to be feasible and to meet the broad criteria of the program, however, the Department is concerned about our ability to fund even currently authorized rural water projects, and does not want to unreasonably raise expectations that new authorized projects would receive the desired federal funding.

#### **Common - Both Water Systems**

Section 7(b) of S.685 addresses the cost indexing for the authorization of appropriations. As previously testified, Reclamation is not aware of a specific rationale for the differing indexing dates prescribed in the legislation. For the Dry-Redwater System, appropriations are to be indexed to January 1, 2008. For the Musselshell-Judith, the appropriations are to be indexed to November 1, 2014.

Authorized rural water projects compete with a number of priorities within Reclamation's Budget, including aging infrastructure, Indian water rights settlements, environmental compliance, restoration actions, developing sustainable water supply strategies, and other priorities intended to address future water and energy related challenges.

The Department has concerns about adding to the backlog of Reclamation's authorized rural water projects seeking Federal construction funding. Discretionary rural water funding has enabled Reclamation to make progress in promoting certainty, sustainability, and resiliency in support of basic drinking water needs of rural western communities. However, Reclamation's ability to make Federal investments that match on-the-ground capabilities has its limitations. Of Reclamation's six currently authorized rural water projects under construction or funded at some level today, all of the projects pre-date Title I of the Rural Water Supply Act of 2006 (now expired). Authorizing additional rural water projects may delay rural water projects that are already under construction.

#### **Conclusion**

The Department recognizes that the people who would be served by S. 685 have legitimate needs for better quality drinking water. We are concerned, given the past history and future prospects of funding for the rural water program, not to raise unreasonable expectations for future federal funding should this bill become law.

That concludes my written statement. I am pleased to answer questions at the appropriate time.

**Statement of Scott Cameron**  
**Acting Assistant Secretary – Water and Science**  
**U.S. Department of the Interior**  
**before the**  
**Committee on Energy and Natural Resources**  
**Subcommittee on Water and Power**  
**On**  
**S. 1012, the New Mexico Drought Preparedness Act**  
**June 14, 2017**

Chairman Flake, Ranking Member King and members of the Subcommittee, I am Scott Cameron, Acting Assistant Secretary for Water and Science at the Department of the Interior. I am pleased to provide the views of the Department of the Interior (Department) on S. 1012, the New Mexico Drought Preparedness Act. This bill aims to enhance coordination for water acquisitions, authorize projects to assist with water conservation, authorize the study of the lower reaches of the Middle Rio Grande, support efforts to provide an annual spring peak flow for the Middle Rio Grande, and provide for a study of Rio Grande reservoirs. The Department supports many elements of the New Mexico Drought Preparedness Act of 2017, but has concerns with some of the new authorizations and with the language of Section 6 of the bill as detailed later in my statement.

Although this bill mentions the Upper, Middle, and Lower Rio Grande basins, as well as the Lower Pecos, Gila, Canadian, San Francisco and San Juan River basins, the primary focus is on work in the Middle Rio Grande in New Mexico. The 2016 biological opinion for water operations, river infrastructure restoration, maintenance, and conservation activities in the Middle Rio Grande defines the Middle Rio Grande as the entire width of the 100-year floodplain of the Rio Grande basin and its tributaries from the Colorado/New Mexico state line to Elephant Butte Dam. The Bureau of Reclamation's (Reclamation) Middle Rio Grande Project (Project) extends from the Velarde area of northern New Mexico south to the backwaters of Elephant Butte Reservoir. The irrigation features of the Project divert water from the river to irrigate between 50,000 and 70,000 acres of irrigable land, including an approximate 20,000 acres of Pueblo Indian land.

Reclamation has been leasing water on the Pecos River and from San Juan-Chama Project contractors for over a decade to supplement river flows for endangered species, consistent with the language of Section 3 of S. 1012. Taxpayers have spent tens of millions of dollars acquiring San Juan-Chama Project water and relinquished Rio Grande Compact credit water in recent years to augment flows in the Middle Rio Grande. However, other than the relinquished Rio Grande Compact credit water, Reclamation has yet to lease and make use of more-than-nominal volumes of native Rio Grande water in New Mexico due to the administrative, legal, and institutional complexities involved. In the explanatory statement printed December 11, 2014, for the Congressional Record, in reference to P.L. 113-235, the Consolidated and Further Continuing Appropriations Act, 2015, Congress encouraged Reclamation to pursue efforts to facilitate agricultural water leasing along the Middle Rio Grande and San Juan-Chama Projects. In response, Reclamation has started a pilot leasing program of pre-1907 water rights and is planning a grant opportunity to solicit the services of outside experts to build and begin testing

the framework for a leasing program in collaboration with the Middle Rio Grande Conservancy District (District). This bill would provide Reclamation and the District with increased flexibility to implement and effectively manage such a program.

For years, Reclamation has provided funding and technical assistance for irrigation districts and water utilities in New Mexico and west Texas to develop sustainable water supplies under various water conservation programs. Examples of such assistance include improving efficiency and conservation under the WaterSMART Program through Water and Energy Efficiency Grants to entities such as the Elephant Butte Irrigation District and funding for the Albuquerque Bernalillo County Water Utility Authority's water recycling and reuse (Title XVI) project, and through the Native American Affairs Program. Reclamation is also working with partners to carry out various landscape-scale efforts through the Basin Study Program. Reclamation, the District, and fifteen other non-Federal partners, including Tribal partners, have been working on a plan of study for a Rio Grande – New Mexico Basin Study. In addition, the six Middle Rio Grande Pueblos participate in the Rio Grande Pueblos Irrigation Infrastructure Improvement Project. Reclamation also provided funding under the Cooperative Watershed Management Program to expand the Rio Chama Watershed Group in 2014 to include the lower Rio Chama Basin, and provided funding to the Upper Rio Grande Watershed District in 2016 to establish a watershed group to bring together ranchers, environmental interests, and land management agencies in the Espanola Basin. Reclamation has provided Drought Response Program funding in 2016 to the Middle Rio Grande Conservancy District for both drought contingency planning and implementation of a drought resiliency project to install a pumping facility to increase the predictability of water supplies for District water users. Any water conservation actions by the District and Pueblos that would result in more efficient use of the available water supply is welcome by Reclamation. However, as indicated previously, existing programs are available to provide the opportunity to cost-share conservation actions that will benefit the Rio Grande system.

Section 5(a) of S. 1012 contains provisions granting five years of a temporary deviation in the operation of Cochiti Reservoir by the U.S. Army Corps of Engineers. Such deviations, if found to be hydrologically beneficial, allow for creation of a spike flow in the Middle Rio Grande through the impoundment and regulation of spring flows. However, in the past 67 years of record, conditions for deviation would only have occurred in five of those years. The Department supports a feasibility study in partnership with the Army Corps of Engineers and Cochiti Pueblo to assess maximized operational flexibilities if the concerns of Cochiti and Santa Ana Pueblos are addressed. The ability to stage water in the spring to augment the native flows in the Middle Rio Grande is an important cue to the endangered Rio Grande silvery minnow to reproduce.

Section 5(b) of S. 1012 authorizes a comprehensive study and a series of projects in the Isleta and San Acacia reaches of the Middle Rio Grande aimed at giving Reclamation and other partnering agencies a better understanding of this area, which is designated as critical habitat for the Rio Grande silvery minnow. The Middle Rio Grande below Cochiti Dam is divided into four reaches defined by locations of mainstem irrigation diversion dams. The Cochiti Reach extends from Cochiti Dam to Angostura Diversion Dam. The reach from Angostura Diversion Dam to Isleta Diversion Dam is called the Albuquerque Reach. The Isleta Reach is bound upstream by

Isleta Diversion Dam and downstream by San Acacia Diversion Dam. Finally, the reach below San Acacia Diversion Dam to the headwaters of Elephant Butte Reservoir is the San Acacia Reach. The study would also assist with development of a plan for moving forward with coordinated water conservation measures.

Reclamation and Department policy require scientific information considered in our decision making to be robust and of the best available quality. Stakeholders must be able to trust the information. Section 6 of S. 1012 authorizes a National Academy of Sciences (NAS) Study of the water and reservoir management and operation from Heron and El Vado down to Abiquiu, Cochiti, and Jemez Canyon dams and reservoirs. A full evaluation of the legal authorities of each of these reservoirs weighed against the basin's hydrology would likely provide water managers all along the Rio Grande in New Mexico with useful information that could prove important as we struggle to meet growing needs with a decreasing water supply. A study of this magnitude, however, is not anticipated in Reclamation's budget, and would have to compete for funding against numerous existing priorities. Therefore, while we see the NAS study as the most comprehensive review of Reclamation operations, we recommend evaluation of ways that this project can build on the work of other studies, such as the proposed Rio Grande- New Mexico Basin Study, if it is selected for funding, and the Rio Chama Pilot Study, which is a review of river and reservoir operations on the Rio Chama. The Department would seek to secure cost-share partners for the review, consistent with the requirements for Basin Studies. This approach would achieve the study objectives outlined in S. 1012, allow for independent scientific input, and limit duplication of efforts and resources.

New Mexico has endured almost a decade of drought. An above average snowpack this spring will allow Reclamation and its stakeholders to start rebuilding storage in nearly empty reservoirs. Reclamation is currently in the process of leasing all of the water that is available at a reasonable price (i.e. excluding what would be covered under the pilot leasing program described above).

The Department generally supports language in Sections 8 and 9 of S. 1012 relating to the authorizations for the WaterSMART Program and under the Reclamation States Emergency Drought Relief Act. We note, however, that if the sponsor's aims is to reauthorize the Reclamation States Emergency Drought Relief Act, Title I of that Act (Section 104(c)) should also be reauthorized to mirror Title III. There are some technical changes we would suggest to ensure that the language can be implemented through Reclamation's existing programs (e.g., the Department supports retaining a required non-Federal cost share contribution which allows Reclamation to leverage Federal and non-Federal funding to construct projects with far more significant benefits than would otherwise be possible, in the WaterSMART Drought Response Program and other WaterSMART programs). We are willing to work with the sponsors and the Committee to refine those sections, and to ensure that the additional financial assistance authorities included in Section 7 do not duplicate other existing authorities. In addition, the legislation should ensure that any drought relief wells funded should be in response to a critical need and prioritization process, and do not add to existing problems associated with groundwater depletion.

Section 10 of S. 1012 provides additional time for completion of the study originally authorized under Section 9106 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11). The

purpose of the study is to assess the feasibility of projects to repair, rehabilitate, reconstruct, or replace Pueblo irrigation facilities recommended to be implemented from fiscal years 2010 through 2019. The study was to be submitted to Congress in March 2011; however, Reclamation was delayed in starting the study. Reclamation is currently scheduled to complete the study in 2017.

All 18 New Mexico Rio Grande Pueblos have agreed to participate in the project. Reclamation supports the language in S. 1012 to extend the study period until December 31, 2018, and extend the ten-year construction period through 2024. Funding for construction will be dependent on availability. Because not all projects can be built, Reclamation will prioritize the projects based on the cost-effectiveness of the proposed investments.

This concludes my statement. I am pleased to answer questions at the appropriate time.

Senator HOEVEN. Thank you, Secretary Cameron.  
 Next we will have Mr. Mark Gabriel, Administrator and CEO of the Western Area Power Administration (WAPA).

**STATEMENT OF MARK A. GABRIEL, ADMINISTRATOR,  
 WESTERN AREA POWER ADMINISTRATION**

Mr. GABRIEL. Thank you, Mr. Chairman and members of the Subcommittee. I am Mark Gabriel, Administrator of the Western Area Power Administration, one of four power marketing administrations within the Department of Energy, whose role is to market and transmit wholesale electricity from 56 hydropower dams.

For the past 40 years WAPA has supplied at-cost electricity to hundreds of municipalities, rural electric cooperatives, public utilities, irrigation districts, federal and state agencies, military installations and Native American tribes. Forty million people benefit from the federal hydropower and transmission services that WAPA provides. They depend on us to provide reliable service, not only today, but also into the future.

Low-cost federal hydropower was a cornerstone in the development of the West and remains a key element of the economic life in maintaining strong communities. WAPA serves a diverse customer base across a 15-state territory the size of Paris to Moscow and Athens to Oslo. We are a complex organization with 10 rate-setting systems and more than 17,000 miles of transmission line. We do this offering the lowest-cost rates consistent with sound business principles.

WAPA is committed to transparency, and so am I. In the four years that I have served as head of the organization, we have proactively taken multiple steps to evolve and increase our transparency efforts and we will continue to do so.

I believe what has prompted this proposed legislation is that some of our customers want access to more information that informs our planning and operations at our Headquarters office and an understanding of how it relates to our annual budget and, ultimately, their rates. This is a reasonable request, and we are working toward that end with many of our customers through multiple processes.

I understand the customer concern for rates. Our rates, however, are extremely competitive. For example, our customers in Arizona benefit from rates that are significantly less than comparable wholesale rates. In our Upper Great Plains Region, customers will be seeing rate reductions in 2018 for the second year in a row.

Now back to our growth. Our Headquarters staff and budget has, in fact, grown over the past decade. It is bringing value to our organization and customers and keeps us well-positioned amid changing times in our dynamic industry. It is aligned with our commitment to business excellence and sound business practices and enables us to continue delivering on our mission and maximize the value of hydropower for all of our customers.

Our growth in headquarters staff has allowed us to build a Continuous Process Improvement Program that has resulted in \$34 million in cost avoidance and cost savings, a 217 percent return on the program's investment.

Some of our “growth,” however, is not growth at all, but an organizational realignment and shifting of the budget that has resulted in increased efficiencies. These changes allow us to improve our ability to adhere to mandatory compliance standards and laws, such as Critical Infrastructure Protection and the Federal Information Technology Acquisition Reform Act. Some of our customers may not agree with these changes that we have made. I believe it is, in part, because we did not do a good enough job communicating early and sufficiently.

We have already begun to increase transparency, specifically regarding our Headquarters budget. I am very proud of these efforts that we began three years ago to address transparency and communication gaps. Customers have stated they are already seeing improvements in how we engage with them on budget issues. We are working well with the Mid-West Electric Consumers Association, our California customer base and the Colorado River Energy Distributors Association. Thanks to our customers in Arizona, we are now partners in a Customer Technical Committee to address a number of improvement opportunities including financial transparency.

We’ve developed a more consistent 10-Year Planning process across our regional offices, have been hosting annual all-customer meetings since 2014, and last year opened up our Headquarters 10-Year Planning process to customers with more engagement in the coming year. Additionally, we host or attend more than 300 meetings with customers annually to share information and answer questions.

Just over a year ago we launched “The Source,” a space on our website dedicated to sharing operational and auditable financial statements. Much of that information was already available on our website, but we brought it into one convenient location and put it front and center. It includes annual reports, presentations, a searchable index of power system data, rates information, key topics and customer news.

We have produced and made available reams of data. We have memorandums of understanding with many customer groups, agreeing to share and discuss financial information. We are more transparent than any organization for which I have worked and we are exploring ways to further expand our engagement. Our transparency efforts are consistent with the spirit of the proposed transparency legislation. We are committed to sharing information openly and honestly and providing a mechanism for feedback.

As a public servant charged with leading a federal organization, a very large utility, I am ultimately responsible for the safe and reliable operation of our large, interconnected generation and transmission system. I take my responsibility in earnest.

Thank you for the opportunity to speak with you today. I look forward to answering your questions.

[The prepared statement of Mr. Gabriel follows:]

STATEMENT OF  
MR. MARK A. GABRIEL  
ADMINISTRATOR  
WESTERN AREA POWER ADMINISTRATION  
U.S. DEPARTMENT OF ENERGY  
BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
JUNE 14, 2017

S. 930, THE WESTERN AREA POWER ADMINISTRATION TRANSPARENCY ACT

Mr. Chairman and members of the subcommittee, I am Mark A. Gabriel, Administrator of Western Area Power Administration (WAPA)—one of four power marketing administrations within the Department of Energy whose role is to market and transmit wholesale electricity from multi-use Federal water projects.

For the past 40 years WAPA has supplied at-cost electricity to hundreds of municipalities, rural electric cooperatives, public utilities, irrigation districts, Federal and state agencies, military installations, and Native American tribes across 15 states. Forty million people benefit from the Federal hydropower and transmission services WAPA provides.

They depend on us to provide reliable service, not only today, but also into the future. Low-cost Federal hydropower was a cornerstone in the development of the West, and it remains a key element of the economic life in maintaining strong communities.

WAPA serves a diverse customer base across a 15-state territory the size of Paris to Moscow and Athens to Oslo. We are a complex organization with 10 rate-setting systems. Our employees work tirelessly to maximize the value of the hydropower we market. We do this by offering the lowest-cost rates consistent with sound business principles.

Let me begin by saying that WAPA is committed to transparency, and so am I. In the four years I have served as the head of the organization, we have proactively taken multiple steps to evolve and increase our transparency efforts, and we will continue to do so.

Now, I would like to address what I believe has prompted this proposed legislation: Some of our customers want access to more information that informs our planning and operations at our Headquarters office and an understanding of how it relates to our annual budget and ultimately, their rates. This is a reasonable request and we are working toward that end with many of our customers through our multiple processes.

I understand customer concern for rates. As consumers, they are right to ask questions. Our rates, are extremely competitive. For example, our customers in Arizona benefit from rates that are



significantly less than comparable wholesale and retail rates. In our Upper Great Plains Region, due to partnership and forward-looking planning, customers will be seeing rate reductions in 2018, the second year in a row.

Now back to our growth. Our Headquarters staff and budget has, in fact, grown over the past decade. It is bringing value to our organization—and customers—and keeps us well-positioned amid changing times in our dynamic industry. It is aligned with our commitment to business excellence and sound business practices, and enables us to continue delivering our mission and maximize the value of hydropower for all of our customers.

Our growth in headquarters staff has allowed us to build a Continuous Process Improvement Program that has resulted in \$34 million in cost-avoidance and cost-savings—a 217-percent return on investment. Some of our “growth,” is not growth at all, but an organizational realignment and shifting of budget that resulted in increased efficiencies, and allows us to improve our ability to adhere to mandatory compliance standards and laws, such as Critical Infrastructure Protection and the Federal Information Technology Acquisition Reform Act.

Some of our customers may not agree with the changes that we have made. I believe it is, in part, because we did not do a good enough job communicating early and sufficiently.

We have already begun to increase transparency specifically regarding our headquarters budget. I am proud of the efforts that began three years ago to address transparency and communication gaps, and the incremental progress we have since made.

Customers have stated they are already seeing improvements in how we engage with them on budget issues. We are working well with the Mid-West Electric Consumers Association, our California customer base, and the Colorado River Energy Distributors Association. Thanks to our customers in Arizona we are now partners in a Customer Technical Committee to address a number of improvement opportunities including financial transparency.

We developed a more consistent 10-Year Planning process across our regional offices, hosted annual all-customer meetings since 2014, and, last year, opened up our Headquarters 10-Year Planning process to customers with more engagement in the coming year. Additionally, we host or attend more than 300 meetings with customers every year to share information and answer questions.

Just over a year ago we launched *The Source*—a page on our website dedicated to sharing operational and auditable financial statements. Much of the information was already on our website, but we brought it to one convenient location and put it front and center. It includes annual reports, presentations, a searchable index of power system data, rates information, key topics and customer news.

We have produced and made available reams of data. We have memorandums of understanding in place with many customer groups, agreeing to share and discuss financial information. We are exploring ways to further expand our engagement.

Our recent transparency efforts are consistent with the spirit of the proposed transparency legislation.

We are committed to sharing information openly and honestly and providing a mechanism for feedback. As an organization, we are accountable for delivering on our mission and responsible for the stewardship of our program and resources for all of our region's customers.

As a public servant charged with leading a federal organization—a utility—I am ultimately responsible for the safe and reliable operation of our large and interconnected generation and transmission system. I take my responsibility in earnest.

Thank you for the opportunity to speak with you today. I look forward to answering your questions.

Senator HOEVEN. Thank you, Administrator.

Next we will hear from the Honorable Jeff Sell, Mayor of Harlowton, Montana.

**STATEMENT OF HON. JEFF SELL, MAYOR, CITY OF HARLOWTON, MONTANA, AND BOARD MEMBER, CENTRAL MONTANA REGIONAL WATER AUTHORITY**

Mr. SELL. Mr. Chairman, Ranking Member King and members of the Subcommittee on Water and Power, my name is Jeff Sell and I serve as a Board Member of the Central Montana Regional Water Authority (CMRWA) which has been working on the Musselshell-Judith Rural Water System project in Montana for over 12 years. I also serve as the Mayor of the City of Harlowton, Montana.

On behalf of the CMRWA and the City of Harlowton, I wish to thank the Chairman and the Subcommittee for the opportunity to testify on behalf of Senate bill 685, the Clean Water for Rural Communities Act. This bill will authorize two regional drinking water projects in different areas of our vast State of Montana.

We want to thank Senator Steve Daines and his dedicated staff, who have helped us craft this important legislation. We wish to thank bill sponsor Senator Jon Tester and his staff, who have provided valuable guidance to our organization over the years during the planning of this project. We also want to thank Secretary of the Interior, Ryan Zinke, as he was the author of this same legislation in the 114th Congress. It is our hope that, under his leadership, the Bureau of Reclamation will continue to work with us to actually build the Musselshell-Judith Rural Water System.

We turn to you, the United States Congress, to pass Senate bill 685 into law and allow us to construct this regional water system. The Bureau of Reclamation has deemed our project feasible, yet Reclamation told us last year it will not recommend the water system for authorization. After 12 years of working with Reclamation and finally securing approval of our feasibility study from Reclamation, we feel the Federal Government's commitment to bringing safe drinking water to our community will only be continued if Congress authorizes this water system.

Let me tell you about our project need. The CMRWA is a coalition of eight incorporated communities, several unincorporated communities and the rural areas within six counties in central Montana with a long legacy of poor water quality and limited quantity.

The water system will provide communities and rural residents in the region with a reliable supply of high-quality drinking water from the Madison aquifer groundwater. The groundwater meets all primary and secondary federal drinking water standards. Delivering this drinking water will improve the health and quality of life of Americans in a large area of Montana.

The CMRWA has already spent nearly \$3 million of state, local and federal funding on the project to date for test well construction, engineering, planning and administration of the project. With this investment the CMRWA has completed several major milestones including completing its 2,200-foot deep test well at Ubet which demonstrated that the adequate quantity of high-quality water is available at the preferred well site; obtained all the water rights

needed for the project; demonstrated to the Federal Government that the project has a benefit-to-cost ratio of 1.28 to 1; demonstrated that the project complies with the National Environmental Policy Act, Endangered Species Act and the National Historic Preservation Act; and completed and received Reclamation approval for the project feasibility report.

Further, the project area has one of the lowest median household incomes in Montana. The low income of this region combined with the lack of dense population centers makes it very difficult for rural areas to afford drinking water infrastructure compared to urban areas.

We have all heard of the drinking water problem faced in the big City of Flint, Michigan, but small towns, ranching communities in the West, face similar water problems. Federal authorization of this project is absolutely necessary, not only to provide safe drinking water but to make the project affordable for our residents in Montana.

In conclusion, the residents, institutions and businesses of this region face significant deficiencies with the existing water supplies. These deficiencies impact the health and safety of residents across this region of Montana. The deficiencies with the water supplies also have a significant economic impact on these communities that have median household incomes among the lowest in Montana.

We have worked for 12 years with the Bureau of Reclamation to become a federally-authorized project; however, after being deemed feasible by Reclamation, we were told we must secure authorization from Congress to continue.

We began work on this project system, excuse me, we began work on this water system before the Rural Water Supply Act was passed in 2006 and implemented in 2008, but we adhered to the stipulations outlined in the Act and completed the process. Reclamation reports that our project is only one of two projects that have successfully completed the feasibility process and that is out of 20 applicants that started the process under the Act; therefore, we need Congress to authorize our project to ensure Reclamation continues to work with us through construction.

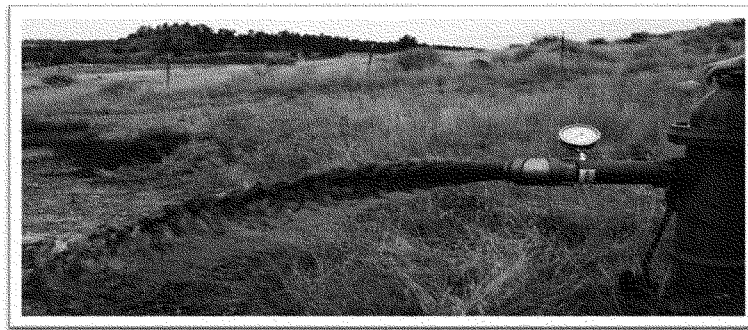
Thank you for allowing me to testify on behalf of the CMRWA and the City of Harlowton for this critical legislation for our region. An adequate quantity of safe drinking water is a basic human need that most Americans take for granted. Please support our efforts to secure a system that will deliver that same promise to our citizens.

Thank you.

[The prepared statement of Mr. Sell follows:]

**Jeff Sell, Board Member  
Central Montana Regional Water Authority  
Testimony Supporting  
Senate Bill S. 685, Clean Water for Rural Communities Act**

U.S. Senate Energy and Natural Resources Subcommittee on Water and Power  
Wednesday, May 10, 2017



City of Roundup Water

Chairman Flake, Ranking Member King, and members of the Subcommittee on Water and Power, my name is Jeff Sell, and I serve as a Board Member of the Central Montana Regional Water Authority (CMRWA) which has been working on the Musselshell-Judith Rural Water System project in Montana for over twelve years. I also serve as the Mayor for the City of Harlowton, Montana.

On behalf of the CMRWA and the City of Harlowton, I wish to thank the Chairman and the Subcommittee for the opportunity to testify on behalf of Senate Bill 685, the Clean Water for Rural Communities Act.

We want to thank Senator Steve Daines and his dedicated staff who have helped us craft this important legislation. We also wish to thank bill cosponsor Senator Jon Tester and his staff, who have provided valuable guidance to our organization over the years during the planning of this project.

We also want to thank Secretary of the Interior Ryan Zinke, as he was the author of this same legislation in the 114<sup>th</sup> Congress. It is our hope that, under his leadership, the Bureau of Reclamation will continue to work with us to actually build the Musselshell-Judith Rural Water System.

The photo above shows the current quality of our drinking water. S. 685 is necessary to authorize two rural water systems in Montana and provide our citizens with safe, clean drinking water.

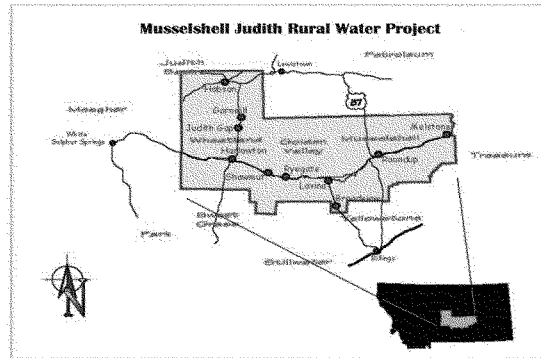
The Central Montana Regional Water Authority began working with the Bureau of Reclamation 12 years ago to gain approval for this Musselshell-Judith Rural Water System. After two years of work, the Rural Water Supply Act of 2006 was passed to authorize the Secretary of the Interior to establish a Rural Water Supply Program. This Program was then implemented in 2008 – after we had been working with Reclamation for approximately four years. The Rural Water Supply Act requires the completion of a comprehensive planning process including an Appraisal Report and Feasibility Report and we abided by all requirements. The Musselshell-Judith project received approval for its Appraisal Report in 2010 and then received Reclamation approval for its Feasibility Report in January 2015. A copy of Reclamation's approval is attached. **This is significant because, out of 20 projects that started the Rural Water Supply Program process, our project is one of only two that successfully completed the Feasibility process.**

However, even though the Bureau of Reclamation deemed our project feasible, it told us last year it will not recommend the water system for authorization. **Therefore, we turn to you, the United States Congress, to pass S. 685 into law and allow us to construct this regional water system. After twelve years of working with Reclamation and finally securing approval from Reclamation, we are left at the mercy of Congress to finalize the federal authorization of our water system.**

Reclamation funding availability aside, federal authorization will allow our approved project to “get in line” at the Bureau of Reclamation for future funding and, more importantly, it will allow the State of Montana and our local communities to commence construction of the project – as our state and communities are responsible for part of the funding for this project.

### Project Need

The Central Montana Regional Water Authority (CMRWA) is a coalition of eight incorporated communities, several unincorporated communities and many rural families areas within six counties in central Montana.



Examples of drinking water challenges currently faced by members of the Authority include the following:

- The City of Roundup obtains its water from a coal mine and the water is so mineralized that it is nearly undrinkable. Iron content is nearly five times the Safe Drinking Water Act standard. Almost all residents buy bottled water and/or use costly in-home reverse osmosis units (over 95% of residents in Roundup purchase bottled water). The multi community survey indicated that 69% of residents within the regional water system area purchase bottled water. In addition, residents are forced to operate water softeners because the water is so corrosive to appliances. Recent flood damage included losing the water main beneath the river connecting the wells to the infiltration gallery requiring costly emergency repairs to the system. With the wells and infiltration gallery being within the flood plain, this is an issue that the City will continue to deal with in the future.

- The Town of Melstone has nearly run out of water several times in the last decade as flows in the Musselshell River approached zero. They have recently decided to decommission their surface water treatment plant and rely solely on their groundwater wells. They constructed two new wells in 2011 with moderate capacities; however both are contaminated with iron bacteria which will require ongoing treatment.
- The Town of Broadview has historically operated two deep, low production, and poor quality wells. If either well were to go out of service, the Town would not be able to meet the average day flow needs of the community which is a significant public health and safety threat to the residents. The two newest wells are also deep (over 1,000 feet) and low production (15 and 20 gpm) and were completed in 2014. While this has added additional capacity to the system, it is not sufficient. The water is extremely mineralized and corrosive so most residents drink bottled water.
- The Town of Harlowton has wells with high sulfate content that make the water very difficult to drink without treatment. Additionally, in recent years one of the town's main production wells (Pritchard Well) began delivering a high volume of black particulate forcing the Town to shut it down and only use it when needed to meet maximum day demands. The Town also had to take one well (South Well) offline during the 2011 flood because of surface water flooding at the well site. Finally, the only other well the city owns (Thompson Well) is threatened by an underground storage tank leak which has resulted in detectable levels of benzene in the well.
- The Town of Hobson has transient non-community public water systems and residents utilizing groundwater from a shallow aquifer with high levels of nitrates. Frequently, these concentrations have exceeded the enforceable standards.
- The Town of Lavina has a history of autonomous non-community public and private water systems which have been identified as containing high levels of nitrates.



### Health Effects of Existing Water Quality

A summary of some of the existing water quality issues and the corresponding impacts on health faced by members of the CMRWA include:

**Nitrates.** High levels of nitrates in drinking water present a significant threat to public health and safety, especially to infants less than 6 months of age. Infants that ingest drinking water with nitrates above the EPA's primary maximum contaminant level could contract a serious illness and, if untreated, may die. Known symptoms include shortness of breath and blue baby syndrome.

**Iron.** Although iron represents a vital mineral in every healthy individual's diet, the level of iron ingested should be controlled. Indeed, a sustained long-term heavy dose can be detrimental to one's health. People with a condition known as Hemochromatosis are the most susceptible to potential harmful effects caused by the long-term exposure to high concentrations of iron in drinking water. Early symptoms of the disease include hair loss, impotence, abdominal pain and shortness of breath. Symptoms become increasingly severe as the disease progresses, causing diabetes, heart failure and even death. It was estimated in a CDC publication from 2002 that approximately 1 in every 250 to 300 people suffer from the symptoms of Hemochromatosis. There are no known cures for Hemochromatosis and once the liver or heart has been damaged due to the progression of the disease, treatment can stop additional damage but cannot reverse it.

**Sulfate.** High concentrations of sulfate in drinking water contribute to a poor aesthetic quality and can also produce a laxative effect for those who ingest it. Some individuals can, however, overcome this condition after becoming acclimated to the water. Most of the communities within the region have documented levels of sulfate of at least twice the recommended limit.

**Sodium.** Most of the water supplies in the planning area have very high concentrations of sodium. Acute effects of excessive salt intake include nausea, convulsions, muscular twitching and rigidity, cerebral and pulmonary edema and can aggravate people suffering with chronic congestive heart failure

**Reliability of Water Supplies**

In general, the reliability of the existing water supplies of member communities is questionable. Several of the communities have experienced water shortages or are very susceptible to that situation due to the precarious condition of their supply infrastructure. Lack of access to a reliable water supply obviously represents a significant public health and safety risk to the residents of this region.

**Financial Need**

Reclamation prepared a Socioeconomic Study on the planning area as part of the final Feasibility Report. The study shows that the area has a very low Median Household Income (MHI). The MHIs of member communities ranged from \$21,838 to \$43,750 per year. This is significantly below both Montana's and the federal MHI, which points to a very strong need for federal financial assistance on this project.

The low income of this region combined with the lack of dense population centers make it very difficult for rural areas to afford drinking water infrastructure compared to urban areas.

We have all heard of the drinking water problems faced in the big city of Flint, Michigan. But small towns and ranching communities in the West face similar water problems. Federal authorization of this project is absolutely necessary, not only to supply safe drinking water, but to make the project affordable for our residents in Montana.

**Project History**

The CMRWA was formed in 2004 to address the significant drinking water issues in the region. The CMRWA has been planning the Musselshell Judith Rural Water System for eleven years with the goal to provide communities and rural residents in the region with a reliable supply of high quality drinking water from the Madison Aquifer groundwater.

The project will utilize a 250-mile piping system to deliver water to users. Once water is pumped out of the proposed wells the entire system will be fed by gravity except one area (Broadview) which requires a small booster

pumping station. The system design is simple yet very efficient for energy use and operations since no treatment plant is required. The groundwater meets all Primary and Secondary Federal drinking water standards. The water will require no treatment except chlorination.

The CMRWA completed its first test well in 2005 which demonstrated that an adequate quantity of high quality water could be developed from the Madison Aquifer for the CMRWA members. The CMRWA initiated work on the Appraisal Report in 2007 and obtained approval for the Appraisal Report from Reclamation in 2010. Evaluation of water supply alternatives completed during the first phase of the Feasibility Report recommended that the wellfield be developed northwest of Judith Gap, Montana called Ubet. The CMRWA completed a test well at this site in 2012 with State, Federal and local funds. The test well demonstrated that an adequate quantity and quality of water was available at this site.

Based on the Ubet test well information, the CMRWA filed for and received the full water rights for the project in 2014 from the State of Montana. The test well information also allowed for the completion of the first draft of Feasibility Report, which was submitted to Reclamation in July 2013. After working through a vigorous and multi-level review process by Reclamation, the CMRWA was able to obtain final approval for the Feasibility Report in January 2015.

In a subsequent August, 2016 letter, Reclamation affirmed that the water project meets the requirements outlined in Reclamation's Directives and Standards, meets the requirements outlined in the Economic and Environmental Principles and Guidelines for Water and Related Resources Implementation Studies (Principles and Guidelines), meets the National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act, and the project has a benefit cost ratio of 1.28:1 which meet the Principles and Guidelines requirements for wise federal investment under the National Economic Development (NED) assessment. However, Reclamation is not recommending the project for Congressional authorization of construction and claims Congressional authorization is necessary to continue.

#### **Monies Spent**

The CMRWA has already spent nearly \$3 million dollars of State, local and Federal funding on the project to date for test well construction,

engineering, planning and administration of the project. With this investment the CMRWA has completed several major milestones including:

- Completed a 2200-foot deep test well at Ubet which demonstrated that an adequate quantity of high quality water is available at the preferred well site.
- Obtained all the water rights needed for the project.
- Demonstrated to the federal government that the project has a benefit/cost ratio of 1.28:1
- Demonstrated that the project complies with the National Environmental Policy Act (NEPA), Endangered Species Act (ESA) and National Historic Preservation Act (NHPA).
- Completed and received Reclamation approval for the project Feasibility Report

We certainly want to ensure that the 12 years and \$3 million of federal, state and local funds are not wasted. Help us build this Water System.

### **Conclusion**

In conclusion, Chairman Flake, Ranking Member King and subcommittee members, it is obvious that the residents, institutions and businesses of this region face significant deficiencies with the existing water supplies. These deficiencies impact the health and safety of residents across this region of Montana. The deficiencies with the water supplies also have a significant economic impact on these communities, which have Median Household Incomes among the lowest in Montana. The CMRWA has already spent nearly \$3 million dollars of State, local and Federal funding on the project to date for test well construction, engineering, planning and administration of the project. We sincerely hope this proves to be a wise investment with the continuation and ultimate completion of this project.

I thank you for allowing me to testify on behalf of the CMRWA and the City of Harlowton for this critical legislation for our region. An adequate quantity of safe drinking water is a basic human need that most Americans take for granted. Please support our efforts to secure a system that will deliver that same promise to our citizens.

For more information please visit CMRWA's website at <http://www.centralmontanawater.com/> or contact the project engineer, Bob Church, at [rchurch@greatwesteng.com](mailto:rchurch@greatwesteng.com) or the project administrator Monty Sealey at [pmservices@midrivers.com](mailto:pmservices@midrivers.com).



**Central Montana Regional Water Authority**  
P.O. Box 175  
Roundup, MT 59072



IN REPLY REFER TO:

MT-700  
PRJ-28.00

## United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region

Montana Area Office

P.O. Box 30137

Billings, Montana 59107-0137

AUG 22 2016

Mr. Monty Sealey  
Project Administrator  
Central Montana Regional Water Authority  
P.O. Box 175  
Roundup, MT 59072

Subject: Status Update for the Musselshell Judith Rural Water System Feasibility Report and Next Steps  
Under the Bureau of Reclamation's (Reclamation) Rural Water Supply Program for Feasibility  
Reports

Dear Mr. Sealey:

The Feasibility Report for the Musselshell Judith Rural Water System is being transmitted to you conveying the understanding that the Feasibility Report has been approved by the Great Plains Regional Director and Policy and Administration (Policy Director) and is being forwarded to the Commissioner of Reclamation (Commissioner). The letter from the Policy Director to the Commissioner is also included for your records.

The Bureau of Reclamation Manual Directive and Standard (D&S) CMP 09-03, Reclamation Rural Water Supply Program, provides guidance on the review and approval of rural water feasibility reports prepared by Reclamation. Section 9.C (2) outlines the procedures for the review and approval by the Regional Director, Policy Director, Commissioner, and the Department of Interior (Department) prior to sending a feasibility report to the Office of Management and Budget (OMB). The following section of CMP 09-03 is pertinent to the approval process:

### Section 9.C (2) - Feasibility Reports.

- (a) Review by Directors. *Completed.*
- (b) Review by the Commissioner. If the Commissioner approves the feasibility report, the Commissioner will sign a memorandum transmitting the report to the Department.
- (c) Review by the Department. The Department will review the report and transmit it to OMB.
- (d) Finalize Report. Once approved by OMB, Reclamation will finalize the feasibility report.
- (e) Notify Project Sponsor of Status. The Regional Director will notify the Project Sponsor whether the feasibility report was approved by OMB.
- (f) Notice of Availability of the Report. The Policy Director will publish a notice in the *Federal Register* about the availability of the report. See § 404.52(d) of the Rule.
- (g) Submit Report to Congress. The Commissioner will prioritize and transmit approved reports to the Assistant Secretary for Water and Science for submission to Congress.

*Note: Project not being recommended for funding. Subsection (g) may not apply.*

The proposed project has been considered feasible by the Great Plains Regional Director and the Policy Director, has a cost-benefit ratio of 1.28:1, and meets the criteria of D&S CMP 09-03. However, it is not being recommended for Congressional authorization of construction. If the proposed project is authorized by Congressional act, prior to construction, Reclamation will compare the final project design to the findings in the Environmental Assessment and determine if further action under the National Environmental Policy Act (NEPA) is required. It is also recommended that prior to project construction, construction and operation, maintenance, and replacement cost estimates be updated to reflect final design quantities and current price levels.

This feasibility report still requires review and approval from the Commissioner, Department, and OMB. This version of the feasibility report may change; therefore, be cautioned not to rely on this version as being the final position of the Administration. I will keep you apprised of when the report is transmitted to the Department. You will be notified by the Regional Director whether the feasibility report was approved by OMB as outlined in subsection (e) above.

If you have any questions, please contact me at 406-247-7298 or Mr. Jerry Benock, Planning and Project Development Division Manager, at [gbenock@usbr.gov](mailto:gbenock@usbr.gov) or at 406-247-7331. Thank you for your patience in processing this report.

Sincerely,



Steven Davies  
Area Manager

Enclosures

cc: Mr. Bob Church  
Great West Engineering  
P.O. Box 4817  
Helena, MT 59604



# United States Department of the Interior

BUREAU OF RECLAMATION  
Washington, DC 20240

IN REPLY REFER TO:

**JAN 10 2017**

The Honorable Shaun Donovan  
Director, Office of Management and Budget  
Executive Office Building  
Washington, DC 20503

Dear Mr. Donovan:

Pursuant to Executive Order 12322, dated September 17, 1981, and Title 43 Code of Federal Regulations Part 404.51, the Musselshell Judith Rural Water Supply System Feasibility Report is enclosed for your review.

The Feasibility Report was prepared under authority of the Reclamation Rural Water Supply Act of 2006, Title I of Public Law 109-451. This law authorized the Secretary to carry out a rural water supply program to 1) investigate and identify opportunities to ensure safe and adequate rural water supply projects for domestic, municipal, and industrial use in small communities and rural areas of the Reclamation states, and 2) plan the design and construction, through the conduct of appraisal investigations and feasibility studies, of rural water supply projects in the Reclamation states.

Central Montana's water supply system in the study area faces numerous challenges that could be addressed by the proposed project. The proposed project was found to be feasible and met the criteria of Title 43 Code of Federal Regulations Part 404, and Reclamation Manual Directives and Standards CMP 09-03. However, I am not recommending Congressional authorization of construction at this time because of existing constraints on Reclamation's program resources and rural water project construction commitments.

Should your staff have any questions during its review of the report, please contact Mr. Robert W. Wolf, Reclamation's Director of Program and Budget, at 202-513-0640.

Sincerely,

Estevan López  
Commissioner

Enclosure



DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION



STEVE BULLOCK, GOVERNOR

1539 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2074  
FAX: (406) 444-2684

PO BOX 201601  
HELENA, MONTANA 59610-1601

May 5, 2017

Honorable Lisa Murkowski, Chair  
Senate Committee on Energy and Natural Resources  
709 Hart Senate Office Building  
Washington, DC 20510

Honorable Jeff Flake, Chair  
Senate Subcommittee on Water and Power  
413 Russell Senate Office Building  
Washington, DC 20510

RE: S. 685 - Clean Water for Rural Communities Act of 2017

Dear Senator Murkowski and Senator Flake:

Montana Senator Steve Daines, with co-sponsorship from Senator Jon Tester and working with the Central Montana Regional Water Authority (CMRWA), has recently introduced legislation in the U.S. Congress for the authorization of the Musselshell-Judith Rural Water System.

The CMRWA is a coalition of eight incorporated communities, several unincorporated communities, and many rural families within six counties in the geographic center of Montana. Reliability of existing water supplies for member communities is questionable, at best. Lack of reliable water supply represents a significant public health risk to the residents of this region. Depth to decent quality potable water for wells is great, and surface water supplies run low in summer as agricultural users divert significant in-stream flows.

We know that reliable water supply is a substantial driver of the economy. Several of the communities which would be served by this regional system are within an hour's drive of Billings, a regional economic hub. Greater opportunities for sustainable growth would arrive with a regional drinking water supply.

Passage of S. 685 would provide for federal support and funding of the regional system. The Rural Water Supply Act of 2006 authorized the Secretary of the Interior to establish and implement a Rural Water Supply Program. The Musselshell-Judith project received U.S. Bureau of Reclamation approval for its Appraisal Level Study in 2010 and approval for

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its Feasibility Report in January 2015. Significantly, this project was the first to complete the planning process prescribed under the Rural Water Supply Act. The State of Montana has supported the planning and administration of the proposed Musselshell-Judith Rural Water System with appropriations and grants totaling over \$3 million, to date. Most of this fiscal support originated from natural resource tax-based funds, established to fulfill the State's commitment to regional water authorities for assistance in financing the non-Federal portions of authorized regional drinking water projects.

Thank you for the opportunity to offer commentary in support of S. 685.

Respectfully,



John E. Tubbs  
Director, Department of Natural Resources and Conservation

cc Governor Steve Bullock  
The Honorable Steve Daines  
The Honorable Jon Tester  
CMRWA Chairman Jim Kalitowski  
Monty Sealey  
Jennifer Johnson

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION



STEVE BULLOCK, GOVERNOR

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May 5, 2017

Honorable Lisa Murkowski, Chair  
Senate Committee on Energy and Natural Resources  
709 Hart Senate Office Building  
Washington, DC 20510

Honorable Jeff Flake, Chair  
Senate Subcommittee on Water and Power  
413 Russell Senate Office Building  
Washington, DC 20510

RE: S. 685 – The Clean Water for Rural Communities Act of 2017

Dear Senator Murkowski and Senator Flake:

Montana Senator Steve Daines, with co-sponsorship from Senator Jon Tester and working with the Dry-Redwater Regional Water Authority (DRWA), has introduced legislation in the U.S. Congress for the authorization of the Dry-Redwater Regional Water System. Development of this rural water project will bring a dependable supply of safe drinking water to more than 15,000 people in eastern Montana and western North Dakota, between the Missouri River and the Yellowstone River.

The State of Montana has supported the planning and administration of this regional water project with appropriations of over \$1,130,000 to date. For the upcoming biennium beginning July 1, 2017, the 2017 Montana Legislature appropriated funding of over \$4.9 million for the state's portion of the non-federal cost share on regional water system construction projects. The DRWA is eligible to apply for a portion of those funds. The natural resource tax-based fund which provides the basis for State of Montana participation in federally authorized regional water projects was renewed through 2031 by the legislature in its most recent session.

Drinking water resources in the proposed regional service area are both of insufficient quantity and poor quality. Providing safe and adequate supplies of drinking water to this region of Montana will protect human health and stimulate further economic activity in the area. The proposed Dry-Redwater regional water system is critical to the future of eastern Montana.

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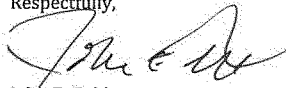
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Your committee's support of this legislation is critical for the success of this project and the long-term viability of the economy of eastern Montana. The State of Montana would appreciate the support of your committee for S. 685, to authorize regional water supply system which will be vital to the state.

Thank you for this opportunity to offer support of S. 685.

Respectfully,

A handwritten signature in black ink, appearing to read "John E. Tubbs", written over a horizontal line.

John E. Tubbs  
Director, Department of Natural Resources and Conservation

cc Governor Steve Bullock  
The Honorable Steve Daines  
The Honorable Jon Tester  
DRWA Chairman Jerry Meissner  
Jennifer Johnson  
Mandi Nay

Senator HOEVEN. Thank you, Mayor Sell.  
 Now we will turn to Mr. Tom Davis, the General Manager of the Yuma County Water Users' Association in Southwestern Arizona.  
 Mr. Davis.

**STATEMENT OF TOM DAVIS, GENERAL MANAGER,  
 YUMA COUNTY WATER USERS' ASSOCIATION**

Mr. DAVIS. Thank you, Mr. Chairman, Ranking Member King and other members of the Subcommittee. My name is Tom Davis, and I'm the Manager of the Yuma County Water Users' Association. We're the oldest and the last diverter of Colorado River water in the State of Arizona, and we're also a customer of Western Area Power Administration.

I'm here to testify on both Senate bill 930 and Senate bill 677—930 being the Western Area Power Administration Transparency Act, and Senate bill 677, the Water Supply Permitting Coordination Act.

I am in support of Senate bill 930 that requires Western to establish within 120 days a public accessible database that will provide its customers transparency into the planning, budgeting, rate setting, purchasing, staffing, contracting process at Western.

And I want—Mr. Gabriel did a fine job of laying out Western's core mission, and I just want to emphasize part of that is the fact that Western is required by law to transmit, market and transmit power to its customers at the lowest possible rate with sound business practices. And now some of the customers have witnessed six percent increases in their power rates each year for the last five years. We feel that a lot of those rate increases aren't due to capital project increases but, in fact, is due to probably the operation and maintenance, staffing needs in some of the offices.

The Yuma County Water Users' Association is a priority use power customer of Western. We're not a large customer of Western and we're not a large entity, but we're 100 percent dependent on Western Power. A lot of our uses of that power is to pump water into Mexico, into Sonora, Mexico, as part of the 1944 Treaty between the U.S. and Mexico to supply Mexico its proportional share of the Colorado River water.

This transparency is good for the customers, but the thing the customers really want is more input into where these costs are going and input into selection of capital improvement projects, input into looking at the staffing needs that Western has.

One of the things we've done in the Southwestern office of WAPA, out of Phoenix, the customers have formed, as Mr. Gabriel mentioned, a Customer Technical Committee. We're working real close over Western with the new staff there in Phoenix to actually have some valuable input into analyzing the staffing needs, the capital improvement projects and both the capital and the O&M budgets of Western and that's working out really well. We're just beginning that process. I think that has a good future. It lets the customers have an understanding of the need of Western. And so, I think that's going to be a good process.

One thing I want to mention. This Administration's 2018 budget proposes the sale of assets of Western and other PMAs to private interest. If you recall, that's come up in previous Administrations

since the 1980s. Congress has always rejected that because it's not favorable to the customers. And I recommend the same position taken by Congress this time. It's not in the customer's interest for these assets to be privatized. We bought and paid for those already once in the past.

In regards to Senate bill 677, that's basically the Water Supply Permitting Coordination Act—it sets up the Bureau of Reclamation as a one-stop shop for new water supply diversion projects that's going to be coming up in the West. And the Bureau then is in charge of wrangling all the other federal agencies that's going to be involved in the NEPA process and the permitting process, to give them a timeline to respond to their permitting needs. It favors those advocates that are needing to get these projects constructed because it sets a time limit and it doesn't run us around the horn of having to deal with a half a dozen different federal agencies. The Bureau is in charge of getting that done, so we really support that bill. And also, the main thing that bill does, it allows the states to be a player in that process. So it allows the Western states to pay into the cost of that process, of the permitting process, and also to provide important data and science into the process.

So I'm in favor of both of these bills, and I think there's a lot of citizen support in the West, particularly for construction of new water and diversion projects. And I hope this process can be streamlined to be able to allow those projects to be constructed in the next 20 years or so.

Appreciate you giving me an opportunity to give you my thoughts, and I'll be happy to answer any questions.

[The prepared statement of Mr. Davis follows:]

Testimony of Tom Davis

General Manager of Yuma County Water Users' Association  
President of the Agri-Business and Water Council of AZ  
Board Member of the National Water Resources Assoc.  
Member of the Family Farm Alliance Advisory Council

United States Senate  
Senate Water and Power Sub-Committee  
June 14, 2017

Chairman Flake, Ranking Member King, Members of the Sub-Committee thank you for allowing me to provide testimony on:

S.930 Western Area Power Administration Transparency Act and  
S.677 Water Supply Permitting Coordination Act

S.930 requires the Western Area Power Administration (Western) to establish within 120 days a publicly accessible database providing its' customers and the public transparency into Western's planning, budgeting, rate setting, purchasing, staffing and contracting processes. Western's core mission is the marketing and transmission of cost-based federal hydroelectric power generated at federal dams within a 15 state region of the Central and Western United States. Under the Reclamation Project Act and Flood Control Act, Western is **required** to market and transmit power **at the lowest possible rates** to its' customers consistent with **sound business practices**. Due to many of Western's recent practices, its' customers are concerned that Western has strayed from its' core mission requirements. As customer's rates have increased by as much as 30% over the past 5 years. I question if Western's rates are consistent with sound business practices. This legislation will give Western's customers, and the public, insight and oversight into Western's business processes to insure compliance with its' core mission.

The Yuma County Water Users' Association is a priority use power customer of Western. We are not a large customer nor do we have a large operational budget, but we are 100% dependent on federal power delivered by Western. Among other uses, we use this power to pump water into Sonora Mexico to satisfy the United States' obligations under the 1944 Treaty to provide Mexico its' annual portion of Colorado River Water. Our annual budget is significantly strained by Western's rate increases.

Western's customers are also concerned that in recent years Western has been the focal point for many renewable energy initiatives such as solar and wind. Western's hydropower customers would like to know if, through Western's increasing expenditures, they are subsidizing these renewable industries.

WAPA's Desert Southwest Office (DSW) customers have formed a Customer Technical Committee (CTC) to explore with the DSW office as to how customers can have transparency and meaningful input into all of DSW's spending and rate decisions. The DSW personnel and customers are striving to have an open and shared partnership in supporting Western in meeting its' **statutory** and **authorized** mission. The transparency afforded by S.930 will make that partnership possible and ensure Western and its' customers viability.

The Administration's 2018 Budget proposes the divestiture of the assets of the Department of Energy's Power Marketing Administrations (PMA's) to private interests. As you will recall, proposals to sell or re-purpose the PMA's have been proposed by every Administration except one since the 1980's. Each time Congress has rejected divestiture as being harmful to the PMA customers. I along with other PMA customers continue to oppose divestiture for a number of reasons. Primarily, the PMA customers have and continue to pay for all capital improvements and annual operation & maintenance of these government owned assets. Additionally, appraising the present value of these assets would be very difficult and there is a risk to the future reliability of the electrical system in rural areas if in private control. Lastly, the rate paying customers would lose the transparency and oversight opportunities, and cost control the WAPA Transparency Act will provide. I am convinced the energy costs of the customers will increase as a result. I encourage Congress to remove this proposed divestiture from the 2018 Budget.

In regards to S.677, the "The Water Supply Permitting Coordination Act." This legislation provides a critical first step towards addressing current regulatory and bureaucratic challenges that delay or even halt the development of new water supply and delivery projects in the Western United States.

I along with the entities I represent, are in full support of this bill and encourage this Sub-Committee to move the legislation forward to enactment.



This bill seeks to streamline the current multi-agency permitting processes that delay the construction of new water storage and delivery projects by creating a “one-stop-shop” permitting process through the Bureau of Reclamation (Reclamation). This bill sets a schedule and time lines for agencies to consult and cooperate to complete environmental compliance. This bill also allows third parties to pay into the costs of such permit processing.

Reclamation is directed to identify all federal agencies with permitting responsibilities or authority, notify them of pending applications, and set a schedule by which all cooperating agencies must complete and submit their reviews and permits. Cooperating agencies are **required** to adhere to the coordinated schedule and use one unifying document for all environmental review. This provision is intended to significantly reduce the time, cost, and inefficiencies associated with the current multi-track NEPA analyses in which each reviewing agency compiles its own data and reviews it separately in a vacuum.

This bill also takes significant steps to strengthen the voice of Western states in the review process by allowing willing states to participate as cooperating agencies. By allowing states to be involved at their discretion to contribute financially in a review process that could also allow states to assist in development of science, data, and technical materials. S.677 also requires that, consistent with existing law, all relevant project data and materials be made publicly available online in a timely manner.

I believe this bill could be improved by adding provisions that require the Reclamation to submit to the participating non-federal entity an estimate of the total cost of the federal administrative permitting process for the proposed projects and to provide a scheduled update on the actual administrative costs with an appropriate explanation of any major cost differences.

Water conservation and water transfers are important tools for improving management of increasingly scarce water supplies. However, it is well known that new storage delivery systems will be necessary for long term solutions to future water demands in the West. We must streamline the existing slow, burdensome and expensive federal regulation compliance process to allow this necessary infrastructure to be constructed within the next 10 to 25 years.

There is strong citizen support in the West for constructing new water storage and delivery projects. S.677 will streamline the existing federal permitting process and will still fully comply with the requirements of the National Environmental Policy Act (NEPA) and other federal laws.

Thank you for the opportunity to present my thoughts. I will be happy to answer any questions.

Senator HOEVEN. Thank you, Mr. Davis.

Now we will turn to Mr. Fisher, who is President of the Patterson Lake Homeowners Association. Thanks for your leadership and thanks for coming back—sorry that you had to make two trips—but it is great to have you here.

Mr. Fisher.

**STATEMENT OF TOM FISHER, PRESIDENT,  
PATTERSON LAKE HOMEOWNERS ASSOCIATION**

Mr. FISHER. Good afternoon. My name is Tom Fisher. I am President of the Patterson Homeowners Association. I am here today representing the 41 permit holders who have permanent homes along the shores of Patterson Lake near Dickinson in southwest North Dakota. We wish to be recorded in strong support of Senate bill S. 440.

The Patterson Homeowners Association would also like to thank Senator John Hoeven for his sponsorship and support for this important legislation. I would also like to thank the fellow members of the Energy and Natural Resources Committee for the opportunity to speak to you today about the Senate bill S. 440.

As a brief history, the Dickinson Dam was completed by the Bureau of Reclamation in May 1950 which impounds the Heart River. The dam, amongst the rolling hills and prairies, created the Edward Arthur Patterson Lake, which covers nearly 1,200 surface acres and 22 miles of shoreline.

The original purpose of the dam and lake was as a municipal water source for the City of Dickinson, with recreation and irrigation as secondary usages. In 1991, the City of Dickinson began getting their water from Lake Sakakawea through the Southwest Pipeline Project and in 1996, the Southwest Water Authority was established to take over the management of the Southwest Pipeline Project.

Since that change in 1991, the dam and lake are no longer utilized for the primary original purpose of construction. Patterson Lake is now used primarily for recreation and adds a tremendous quality of life to the City of Dickinson and to the surrounding communities.

Speaking of the quality of life, in the last 15 months I have gotten to know all of the homeowners on a very personal level. I have heard many stories of barbecues, holiday gatherings, graduations and wedding receptions that have taken place in our neighborhood. I've also had non-association members ask me on a daily basis whether or not we have come up with a solution. Those conversations usually end up with me hearing about a breathtaking sunset that they have witnessed on the lake. Many others have told me about stories of being on the lake and how wonderful it is to have a resource like that just only minutes from town.

Patterson Lake and the surrounding area has always been a major outdoor recreation destination for the residents of Dickinson, Stark County and the region, so continuing public access to the lake is important to everyone in the area.

In our many discussions and interactions with the elected members of the Dickinson Park Board and the employees, maintaining that public access has always been paramount to those discussions

and everybody in the community looks forward to continuing the usage of the lake, parks, golf course and other activities currently available.

Patterson Lake homeowners have been trying to purchase the lots around this lake for over 30 years. Over those years, the Patterson Homeowners Association has worked with and had many discussions with the local park board, city and county officials, along with the North Dakota Game and Fish Department and our local state legislators, Governor, as well as both the prior and current congressional delegation.

During that time, each of these individuals has expressed support for our efforts. This bill is the culmination of those efforts and discussions. We have worked with and met with the Bureau of Reclamation, the Park Board Department and officials and city and county elected and appointed individuals to discuss how we can move forward in a positive manner. Those meetings have included the Executive Board of the homeowners association, the entire homeowners association membership, multiple meetings with staff of our congressional delegation and two meetings with Senator Hoeven himself.

The Patterson Lake Homeowners Association takes very seriously the varied interests and concerns of all stakeholders, which is why it has been a priority to have transparent and constructive meetings to allow for full and open discussions.

The homeowners take significant pride in not only the ownership of our homes, but the manner in which we maintain the land where our homes sit, as well as the other surrounding federal lands bordering our homes. We pay property taxes to Stark County and to the Dickinson School District for the assessed value of our homes, as well as a small usage tax for the land. Additionally, we pay an annual permit fee to the park board and these funds have been used to help maintain the public lands around the lake. If this bill is approved, we will pay additional further property taxes to the county and schools for the assessed value of the land, which will further benefit the community.

With the passage of Senate bill S. 440, the homeowners will be given the option to buy the land under their permanent homes. For most of us, our home is our greatest investment and asset. This bill would allow financial lenders to use the land and all the improvements the homeowners have made over the years as securities. By doing so, this will open the opportunities so we can make improvements to utilize the equity for whatever purpose we deem necessary and appropriate. For example, lenders have now advised us that we can no longer take out home improvement loans for our homes or access the equity due to not owning the land underneath the structures. Passage of S. 440 will not only provide us the opportunity to make improvements to our homes, but it will also eliminate financial uncertainties.

We are not asking for a giveaway as this bill will require that the land and the purchase price of the land to be established based on fair market value through a third-party appraiser in the same manner as the value for all other properties appraised.

The Patterson Lake Homeowners Association members are very active in the community. Most have been on numerous volunteer

committees and boards and helped with countless city and county projects. The members are tax paying, productive, hardworking people who are excellent stewards of the lake and land that we choose to enjoy as homeowners.

We, as homeowners, support the Senate bill S. 440. With this bill's passage we too will have the chance to experience the American Dream of home ownership and security.

Thank you for your time.

[The prepared statement of Mr. Fisher follows:]

**Testimony of Tom Fisher  
President, Patterson Lake Homeowners Association  
Before the Senate Committee on Energy and Natural Resources  
Subcommittee on Water and Power  
United States Senate  
June 14, 2017**

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Speaking of the quality of life, in the last 14 months, I have gotten to know all of the homeowners on a very personal level. I have heard many stories of barbeques, holiday gatherings, graduations and wedding receptions that have taken place in the neighborhood throughout the years. I also have had non-association members ask me on a daily basis whether we have come up with a solution. Those conversations usually end up with me hearing about a breathtaking sunset that they have witnessed out at the lake. Many others tell me stories about being on the lake and how wonderful it is to have a resource like that only minutes from town.

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The Patterson Lake Homeowners Association members are very active in the community. Most have been on numerous volunteer committees and boards and helped with countless city and county projects. The members are tax paying, productive, hardworking people who are excellent stewards of the land and lake that we choose to enjoy as homeowners. We, as homeowners, support the Senate Bill S.440. With the bill's passage, we too will have a chance to experience the American Dream of home ownership and security.

Thank you for your time.

Senator HOEVEN. Thank you, Mr. Fisher.  
Now we will turn to Mr. Hamman, Chief Engineer and CEO of the Middle Rio Grande Conservancy District in New Mexico.

**STATEMENT OF MIKE A. HAMMAN, CHIEF EXECUTIVE OFFICER, MIDDLE RIO GRANDE CONSERVANCY DISTRICT**

Mr. HAMMAN. Thank you, Mr. Chairman, Ranking Member King and members of the Subcommittee for the opportunity to testify on the New Mexico Drought Preparedness Act (the Act). I am Mike Hamman, the Chief Executive Officer of the Middle Rio Grande Conservancy District (the District) and have served in this capacity for two and a half years. I have over 32 years of public service in Western water resources management including 18 years with the Bureau of Reclamation, culminating in five years as the Area Manager in the Albuquerque area office, working primarily on Rio Grande issues.

This Committee received our detailed written testimony for the record supporting this legislation, so I will focus my testimony on the very positive developments that have occurred in the Middle Rio Grande since this Committee last heard our testimony in October 2015.

I'm very pleased, Mr. Chairman, to inform the Subcommittee that along with our partners, the Bureau of Reclamation, the Bureau of Indian Affairs, the Fish and Wildlife Service and the State of New Mexico, we have successfully negotiated a new Biological Opinion (BO) for the Middle Rio Grande that moves us away from the highly prescriptive measures of the 2003 BO toward a performance-based strategy that will use sound science and adaptive management process.

The four objectives of this 15-year, non-jeopardy, Biological Opinion are to: operate the reservoir system to create more spring spawn and recruitment flows for the endangered silvery minnow; acquire water for summer survival flows to help minimize river drying; create and maintain more in-river habitat that increases flood plains at lower flows; and construct fish passage structures at three district diversion dams. Each of these requirements is well supported and enhanced by this bill, with these proposed changes and authorities for federal partners in the basin.

Section Five of the Act requires that additional authority be afforded to re-operate Cochiti Dam in order to provide needed flexibility to meet the first and most important objective toward species recovery, particularly during drought years. The District strongly supports this critical action necessary for long-term survival of the silvery minnow and to meet human needs during times of shortage. We urge that Cochiti Pueblo will be consulted with early on so that any impacts to their lands are addressed thoroughly.

We also recommend that all six Middle Rio Grande Pueblos be consulted regarding this legislation.

The District is the lead agency engaged in four WaterSMART Grants with Reclamation under the 50/50 cost share requirements for these programs. We are: developing a drought contingency plan with basin stakeholders; performing a pilot on-farm efficiency project to encourage more farmers to improve irrigation practices; investing \$700,000 in cost share for a water salvage pumping sta-



tion that will provide water to support river marine habitat and to also supplement irrigation during low flow periods, it will be completed by 2018; and we have also joined with Reclamation to lead an Upper Rio Grande Basin Study from the Colorado border to Elephant Butte Dam involving a broad group of basin stakeholders.

This bill will enhance these types of projects. However, given that a Rio Grande Basin Study will be underway soon, we suggest that under Section Six, the National Academy of Sciences be asked to serve as an independent science panel to peer review basin study work in the Rio Grande Basin in lieu of conducting its own study as they are restricted from including Elephant Butte Reservoir operations that is critical for a comprehensive study.

Reclamation is also partnering with the National Fish and Wildlife Foundation and the District to create a pilot Water Banking Program for willing lessors of pre-1907 water rights within the District. This would be consistent with Section 3 of the Act.

The District fully supports reauthorizing the Secure Water Act, and we strongly support reauthorization of the Rio Grande Pueblos' Irrigation Infrastructure Improvement Act that will continue to provide resources to our Pueblo partners to improve inefficient irrigation systems as they receive water from the District works.

In closing, Mr. Chairman and Committee members, the District believes that passage of this legislation will assist in providing additional tools for federal agencies to use in helping state, tribal and local partners prepare this region for extended drought.

The evidence is clear that drought conditions will persist given that during the last 15 years we have seen above normal snowmelt runoff in only five of those years and having experienced an unprecedented five consecutive years of below to well-below normal runoff in the Rio Grande Basin.

We thank Senator Udall and Committee member Heinrich for their work in introducing this bill and this Committee for this hearing on drought preparedness so critical to the future of New Mexico.

I stand ready for any questions.

[The prepared statement of Mr. Hamman follows:]

**Written Testimony  
Submitted to the  
United States Senate  
Committee on Energy and Natural Resources**

**on**

**S. 1012**

**New Mexico Drought Preparedness Act of 2017**

**Respectfully Submitted By Mike A. Hamman, PE  
Chief Executive Officer  
Middle Rio Grande Conservancy District**

Rio Grande Water Development in New Mexico

The Upper Rio Grande originates in the San Juan and Sangre de Cristo mountain ranges in southern Colorado and northern New Mexico. It bisects the San Luis Valley in Colorado and the entire state of New Mexico with this reach culminating at Fort Quitman, Texas. This portion of the Rio Grande is administered under the Rio Grande Compact by a federal appointee and three Commissioners from Colorado, New Mexico and Texas with support from the United States Geological Survey, the Bureau of Reclamation, and the Army Corps of Engineers. The annual mean flow as measured at the Otowi gage in New Mexico is 1 million acre-feet with wide variation, ranging from 250,000 to 2.5 million acre-feet. Irrigated agriculture consists of approximately 600,000 acres in Colorado, 200,000 acres in New Mexico, 100,000 acres in Texas. Additionally, up to 60,000 acre-feet is delivered to lands within the Republic of Mexico via the Rio Grande Project under the 1906 Convention between the United States and Mexico. The predominate crop due to climate, water supplies and labor considerations is alfalfa. Other crops include potatoes, chilé, corn, fruit, onions and pecans. There is an improving 'farm to table' market serving a demand for locally produced agricultural products ranging from lettuces to melons as well as organically grown products particularly near and in municipalities.

Due to rapid development in Colorado in the late 1800s, water shortages occurred in New Mexico and Texas on lands that had been irrigated dating back to the 1600s. Native American pueblo farmers, of course, irrigated even earlier. Litigation and international concerns led to the development of Reclamation's Rio Grande Project that built Elephant Butte and Caballo dams as well as a federal embargo against water development in Colorado and New Mexico pending the negotiation of the 1939 Rio Grande Compact (Compact). Since that time, there have been significant legal challenges raised by the states during drought periods that led to amendments to the Compact. There is currently a Supreme Court case whereby Texas alleges that New Mexico's water administration rules within the Mesilla Bolson are allowing excessive groundwater pumping that limits surface water deliveries through the riverbed to Texas, and by extension, to the Republic of Mexico. This case has been assigned to a Special Master and is proceeding at significant cost to the litigants and the United States. The Special

Master has issued his first report to SCOTUS recommending that New Mexico's motion to dismiss based on jurisdictional grounds be denied.

The upper Rio Grande differs significantly from the Colorado River Compact. On the Colorado River the Secretary is the river master and can mediate differences between the seven states given the United States' ownership of main-stem and tributary reservoirs serving all seven states. There are only two main-stem reservoirs on the upper Rio Grande, Elephant Butte/Caballo dams above Las Cruces and Cochiti Dam 60 miles north of Albuquerque, which is operated only as a flood control feature by the Corps of Engineers. Federal reservoirs were developed case-by-case for specific purposes with narrow authorities; they were not planned for use in administering the entire Rio Grande. This means that the upper states of Colorado and New Mexico have minimal storage options and must survive on the whims of the climate through a "run-of-the-river" type operation while meeting downstream delivery requirements as determined by the Compact. There have been a number of water short (drought) periods that have tested the resilience of the Compact. The 1950s was the worst, until the drought that began in the late 1990s and persists today. This has been the first period in recorded history where there has been far below average spring runoff for five consecutive years.

#### The Middle Rio Grande Valley and the Middle Rio Grande Conservancy District

The Middle Rio Grande Valley begins at the base of Cochiti Dam and extends some 160 miles south to Bosque del Apache National Wildlife Refuge. Approximately 65,000 acres are currently being irrigated in the Middle Rio Grande by the Middle Rio Grande Conservancy District (District). The District operates and maintains over 1,200 linear miles of canals, laterals, ditches and drains to meet the needs of its irrigators within six Native American Pueblos (Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta) and four counties. The District serves the irrigation needs of the six middle Rio Grande Pueblos, which include 8,847 acres of lands with prior and paramount water rights and an additional 11,951 acres of reclaimed irrigated lands.

The District is a surface water management entity and does not hold any ground water permits for its operations. The middle valley water supply system is a "run-of-the-river" operation, meaning that the spring runoff and summer monsoons provide the predominant flows to four diversion dams in the middle valley. There is some upstream storage on the Rio Chama at El Vado Dam (maximum of 186,000 acre-feet) to supplement late summer base flows. El Vado Reservoir storage is also limited by the terms of the Rio Grande Compact, making the middle valley subject to frequent shortages late in the season.

During the drought of the 1950s, the State Engineer "closed" the Middle Rio Grande basin to further unpermitted ground water appropriations. This required that new ground water wells be permitted and that their depletions be "offset" through the retirement of existing surface water associated with pre-1907 water rights. New Mexico and Colorado also incurred significant under deliveries to the Rio Grande Project during this period that severely restricted the District's use of El Vado Reservoir. This situation helped motivate completion of the San Juan-Chama Project to harness New Mexico's share of the Colorado River Compact, bringing an additional 96,000 acre-feet of water to the middle valley. This provided some relief but with shortages being experienced on the San Juan-Chama Project for the first

time in 2014 and 2015, the climatic conditions and Compact restrictions are severely limiting the District's abilities to manage shortages during this prolonged drought. This year and last the basin experienced average and above average runoffs. These conditions have occurred in only five years since 2001.

Endangered Species Act litigation led to a 2003 Biological Opinion for Middle Rio Grande water operations. This solidified the Middle Rio Grande Endangered Species Collaborative Program that authorized Reclamation to acquire San Juan-Chama project water from "willing" lessors to address habitat needs and set up a scientifically based adaptive management approach to conserve endangered species. The District is a prominent member of the Collaborative Program along with three federal agencies and twelve other state, tribal and local entities. The District has made significant commitments to off-set its actions and implemented conservation measures to advance the recovery of the silvery minnow, southwestern willow flycatcher, the yellow-billed cuckoo, and the meadow jumping mouse. The added conservation actions associated with the District's and Reclamation's operations have significantly enhanced the in-river conditions within the system but have reached their limitations based on water availability and the relative inflexibility of the federal reservoir system. The 2003 Biological Opinion was prescriptive and inflexible. The District, and its Biological Assessment partners (US Bureau of Reclamation, US Bureau of Indian Affairs, and the New Mexico Interstate Stream Commission), consulted collectively with the US Fish and Wildlife Service (Service) and successfully completed the 2016 Biological Opinion. The new Opinion (BO) has four major objectives: 1) Produce as many annual spring peak and overbank flows that produce silvery minnow spawn and recruitment conditions as available water and operational flexibilities allow; 2) Utilize system optimization and available summer flows to minimize river drying increasing the chances of summer survival; 3) Increase available habitat by lowering bank lines and creating backwater areas at for lower flow rates; and 4) Design and construct fish passage structures at the three District diversion dams. These four major objectives will be coupled with increased monitoring, continuing propagation as needed, and the implementation of a strong science program that will be based upon sound adaptive management strategies. It is envisioned that the Collaborative Program will be reinvented to become the core planning and science oversight mechanism for BO implementation and support for the agencies providing ESA compliance for the middle Rio Grande.

The New Mexico Drought Preparedness Act of 2017(the Act), sponsored by both Senators Udall and Heinrich, is principally designed to build upon, enhance and reauthorize the Secure Water Act of 2009. It will enhance agency authorities to allow for resources and operational flexibilities necessary to address changing climatic conditions in the desert southwest and help agencies, irrigation districts, and other water users to better cope with the wide variations in water supplies while meeting the requirements of the Endangered Species Act. We also note that the Pueblo Indian water users in the middle Rio Grande will be affected by many sections of the Act and thus encourage significant consultation and coordination with those tribal governments to assure their interests are adequately protected.

Section three of the Act proposes the establishment of a water acquisition program that is designed to assist in providing voluntary leasing options for farmers and other water right holders. This will allow for

additional water to remain in the river to support endangered species and to assist the District with water management and efficiency improvements. The District generally supports this effort with the understanding that leasing actions are only useful if there is actual water available for the purpose identified. Taken in concert with other sections of the bill, this water-leasing program can be a useful but limited tool for promoting agricultural and ecological resiliency. The District is uniquely positioned to sponsor a “pilot” leasing program for assuring that pre-1907 water rights remained tied to the land, while affording an opportunity for a targeted water supply to be available to sustain important habitat areas located south of Isleta Diversion Dam. The District recommends that the language in this section be made clearer that the Secretary must consult with the Six MRG Pueblos about this program.

Section four of the Act provides funding to address efficiency and conservation measures in areas the District and the MRG Pueblos believe are necessary for water management in the long-term, particularly in reaches of the river where summer drying is a common occurrence even in “good” water years. Actions already taken by the District to strategically deliver water to the river can be significantly enhanced by investments in efficiency measures focused on enhancing habitat where water is consistently available. The additional focus on the Isleta and San Acacia reaches of the river where it is most difficult to minimize river drying is welcome and the District has obtained a WaterSMART grant to build a pumping station at Neil Cupp that will replace a temporary pumping plant operated by Reclamation to allow for salvage drain returns to be used for in-river habitat maintenance, supplementing irrigation shortages, or both. The District is investing \$600,000 as cost-share on this project.

Section five of the Act addresses the need to provide critical flexibility within the federal reservoir system, with a particular emphasis on Cochiti Dam and Reservoir given that it is on the main-stem at the top of the Middle Rio Grande. Having the appropriate degree of authority provided to the Corps and/or Reclamation for managing a “conservation” pool for operational purposes will allow for spring pulse re-regulation to more accurately meet fish spawn and recruitment flows, preserve in-system flows during monsoon events, and generally assist with Compact delivery needs (assuming the three states can agree on needed adjustments to the Compact). If the Army Corps of Engineers cannot deviate from current operations and retain the ability to modify operations in the long-term, spawning of the silver minnow will be difficult and the species may not be recovered. We fully recognize the potential impacts that any changes to Cochiti authorization, including temporary deviations in operations, may have to Cochiti Pueblo and we fully support any action necessary to address the Pueblo’s concerns and request that the Pueblo be brought in at the very beginning of the process through formal government-to-government consultation. This is especially important given the physical and social damage that the construction of Cochiti Dam inflicted on the people and lands of Cochiti Pueblo. We also recommend consultation be extended to the other five MRG Pueblos who are downstream of Cochiti Dam and Reservoir and are affected by its operation.

Section six of the Act addresses the need for a comprehensive review of the upper Rio Grande that includes federal reservoir authorities, the Rio Grande Compact, and water management practices within the basin. We support such a study and have become a primary local partner with Reclamation in the development and completion of such a basin-wide study (Upper Rio Grande Basin Study) that is already

funded through Reclamation's Basin Study authority under the Secure Water Act. The District recommends that funding from this bill be dedicated to an independent science panel to provide a peer review process to help guide the Upper Rio Grande Basin Study process and provide assurance that it will have a scientifically-based focus with a sound and comprehensive review of policy matters with meaningful participation by agencies, Pueblos and other interests. As written, the Act has the NAS Study moving forward independently of the Basin Study process and we suggest this may be redundant and may fall short of what the Basin Study will be looking at given that the NAS Study would not be allowed to look at the reservoirs (Elephant Butte and Caballo) within the Rio Grande Project missing impacts of Rio Grande Compact requirements imposed on the upper basin.

The District supports section seven as emergency drought funding during severe water shortages would be welcome assistance for water users within the District including the six MRG Pueblos. Sections 8, 9 and 10 are also fully supported by the District with particular emphasis on the reauthorization of the Rio Grande Pueblo Irrigation Infrastructure Act. This is very important to the six MRG Pueblos and the District as we are strong partners in working together to leverage District, BIA, Tribal and Reclamation funds to construct and rehabilitate irrigation features to improve irrigation expand Pueblo irrigation features, improve efficiencies and provide drought resiliency. We also urge the Secretary of Interior, through the BIA and Reclamation, to consult frequently with our Pueblo partners in implementing this Act as well as the NM Drought Preparedness Act once it becomes law.

The basin has experienced a brief relief as there was an above average snowpack in 2016 and now in 2017 but long-term indications are that persistent drought may be the new normal in the southwest so the District and its partners will be working diligently to leverage all available resources to prepare for warmer and dryer years. These bills are designed to provide resiliency in times of drought and to maximize scarce resources for these purposes. The Middle Rio Grande Conservancy District will continue to do its part within its capabilities to achieve long-term and continuous improvements to preserve the agricultural and cultural uses of water while preserving the outstanding natural resources of the Middle Rio Grande Valley.

Senator HOEVEN. Finally we will hear from Christopher Wynn, the Vice President of Northeast Operations for the Brookfield Renewable Group which has a significant portfolio in the State of Maine.

**STATEMENT OF CHRISTOPHER WYNN, VICE PRESIDENT,  
NORTHEAST OPERATIONS, BROOKFIELD RENEWABLE**

Mr. WYNN. Mr. Chairman, Ranking Member King, members of the Subcommittee, good afternoon and thank you for the opportunity to appear today. My name is Todd Wynn, and I'm the Vice President of Northeast Operations at Brookfield Renewable. In that role, I oversee operations of all Brookfield's hydroelectric and wind facilities in Maine, New Hampshire and Massachusetts.

Brookfield Renewable is one of the largest, independent hydropower producers in the United States. Our portfolio is comprised of 88 percent hydroelectric generation. We operate these resources with an embodying global commitment to safety, environmental responsibility and community engagement.

In the United States, we own and operate nearly 140 hydropower facilities and seven wind farms across 13 states. These facilities generate approximately 14 terawatt hours of clean, renewable and reliable energy, enough to supply one million homes and making us intimately familiar of the challenges of relicensing small and large hydropower facilities alike.

Today, I'm here to support two bills proposed by Senator King that we believe will help support hydro owners and operators—the Small Dam Exemption Act and the Small Dam Information Act.

Hydropower is a proven, long-life and reliable, renewable resource providing critical, baseload power and delivering a variety of important benefits to the electrical grid. As America's first indigenous, renewable energy source, it contributes valuable fuel diversity and security to our domestic energy portfolio. It is also highly flexible, able to quickly ramp up and down to support fluctuating grid demands. This flexibility is critical for liability and helps to accommodate the increasing penetration of intermittent generation such as wind and solar.

While hydropower facilities appear to operate nearly self-sufficiently, they're actually a capital-intensive resource requiring continuous monitoring and re-investment to ensure reliable, efficient and safe operation. This investment helps stimulate local economies and sustain nearly 517 Brookfield Renewable jobs nationally.

In Senator King's home state, where we operate 39 small-scale facilities, we invested nearly \$16 million last year. By creating an opportunity to streamline the FERC permitting process for small hydropower assets, Senator King's Small Dam Exemption Act is an important initial step toward better acknowledging the value and importance of these resources.

Although the FERC relicensing process is defined as five to six years, a hydropower relicensing sometimes takes eight to ten years to complete. Over 500 projects nationwide will begin their relicensing process between 2017 and 2030, representing about half of all hydropower projects licensed by the Commission. The vast majority of these projects are very small with a median install capacity of two and a half megawatts.

The cost to relicense a project is not directly tied to a facility's energy output. A one megawatt project is forced to file the same licensing process as a 1,000 megawatt project. The cost of a single, hydro licensing process can vary considerably and can run to millions of dollars in certain cases. The challenge is especially acute with smaller dams and for smaller hydro operators. Small projects earn less revenue, making it more difficult for small projects to absorb or recover the costs associated with licensing and any protection mitigation enhancement measures. This is leading some small hydro operators to surrender licenses and/or decommission smaller projects.

Providing FERC with the discretion to exempt certain small hydro projects from the relicensing process while still providing prudent and necessary environmental oversight is an important step toward streamlining the licensing process and recognizing the values that these resources provide.

We applaud Senator King's leadership on relicensing for small scale hydro and also wish to speak briefly on the Small Dam Information Act. While not directly impacting the majority of our portfolio we understand this Act seeks to study how requiring FERC licensing of small, non-powered dams balances with the challenges and burdens of the licensing requirements.

As we noted previously in our testimony, FERC licensure can impose significant economic challenges. We believe to understand the various costs and options available to license non-powered dams can only be helpful to policymakers and regulators who might consider future legislation on this topic.

Thank you for the opportunity to testify today, and I welcome questions from the Committee.

[The prepared statement of Mr. Wynn follows:]



**Prepared testimony of Christopher Wynn,  
Vice President, Northeast Operations, Brookfield Renewable  
Senate Committee on Energy and Natural Resources' Subcommittee on Water and Power  
June 14, 2017**

**Introduction**

Chairman Flake, Ranking Member King and Members of the Subcommittee, good afternoon and thank you for the opportunity to appear before the Senate Energy and Natural Resources' Subcommittee on Water and Power. My name is Todd Wynn and I am the Vice President of Northeast Operations at Brookfield Renewable. In that role, I oversee operations of all hydroelectric and wind facilities in Maine, New Hampshire and Massachusetts.

Brookfield Renewable is one of the largest renewable power companies in the world, as well as one of the largest independent hydropower producers in the United States. Our portfolio is comprised of 88% hydroelectric generation, with the remainder coming from wind. We operate these resources with an abiding global commitment to safety, environmental responsibility and community engagement. In the United States, we own and operate nearly 140 hydropower facilities and 7 wind farms across 13 states, including Maine, Louisiana and West Virginia. We are also an active participant in all FERC regulated markets. Our U.S. portfolio encompasses generation of approximately 14 TWh of clean, renewable and reliable capacity, enough to supply 1 million homes and making us intimately familiar with the issues and challenges of relicensing small and large hydropower facilities alike.

Today I am here to support two bills proposed by Senator King that we believe help support hydro owners and operators like Brookfield Renewable, S. 1029, The Small Dam Exemption Act, and S. 1030, the Small Dam Information Act.

**Role of Hydropower**

Hydropower is a proven, long-life and reliable renewable resource, providing critical, baseload power and delivering a variety of important benefits to the electric grid. As America's first indigenous renewable energy source, it contributes valuable fuel diversity and security to our domestic energy portfolio. It is also highly flexible, able to quickly ramp-up and down to support fluctuating grid demands. That flexibility is critical for reliability and helps to accommodate the increasing penetration of intermittent generation, such as wind and solar, which is becoming increasingly important in power markets across the nation. An example of this is the use of existing hydropower to pair with wind or solar generation, creating a clean, firm energy product that can be delivered directly to the electricity load-centers that require it. Given its baseload and flexible profile, hydropower is uniquely suited to provide these sorts of optimized energy solutions.

Hydropower also delivers considerable benefits to local communities, including low flow augmentation, flood control, irrigation and water supplies, as well as recreational opportunities such as fishing, swimming and boating. In many smaller or rural communities, hydro facilities are a significant community taxpayer, often providing a large percentage of municipal revenues and, in many cases, the majority of these revenues.

And while hydro power facilities appear to operate nearly self-sufficiently over many decades, they are actually a capital intensive resource, requiring continuous monitoring and reinvestment to ensure reliable, efficient and safe operation. For example, in Senator King's home state, where we operate 39 small scale facilities, we spent nearly \$16 million dollars in 2016 on regular facility maintenance and investments. This is a markedly different investment profile relative to other renewable energy sources, and it provides ongoing economic activity for host states and communities that, in turn, help stimulate local economies and sustain nearly 570 community-based jobs.

Yet despite the clear value and benefits hydropower brings to the grid, the environment and local communities, the resource is frequently an afterthought, afforded differential or discriminatory treatment under both state and federal policies. For example, right now, existing U.S. hydropower resources are not considered renewable under federal energy procurement standards. We note, however, that this concept was included in last year comprehensive energy bill and is again included in early versions of potential bills in this Congress. Existing hydropower is also typically considered a "Tier 2" resource in state Renewable Portfolio Standard programs, despite delivering an identical, if not superior, clean energy product.

In short, we believe that hydropower is an undervalued resource under existing public policies and within regional energy markets. By creating an opportunity to streamline the FERC permitting process for small hydropower assets, Senator King's Small Dam Exemption Act is an

important initial step toward better acknowledging the value and importance of these resources.

### **Relicensing Challenges**

Although the FERC licensing process is defined as 5-6 years, a typical hydropower relicensing actually takes 8-10 years to complete. Over 500 projects nationwide will begin the relicensing process between 2016 and 2030, representing about half of all hydropower projects licensed by the Commission, and about 30 percent of the total hydropower licensed capacity under the Commission's jurisdiction.<sup>1</sup> The vast majority of these projects are very small, with a median installed capacity of 2.5 MW. However, the cost to relicense is not directly tied to a facility's energy output. A 1 MW project is forced to follow the same licensing process as a 1000 MW project.

The relicensing process is complex and resource intensive for all the parties involved, including the licensee, state and federal jurisdictional agencies and stakeholders. The cost of a single hydro licensing process can vary considerably, but can run to tens of millions of dollars in certain cases – and this is in addition to the significant ongoing costs of maintaining the hydropower resource itself. The single largest cost driver associated with the relicensing of a project is environmental studies, which cover an array of topics including recreation, endangered species, cultural resources, fish passage and protection of aquatic and terrestrial resources. Brookfield Renewable typically spends \$750k to \$1.5M for the entire process costs

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<sup>1</sup> Testimony of Ann Miles, FERC, before the House Energy and Commerce Committee, Subcommittee on Energy and Power, May 13, 2015.

to relicense a single project and currently has 12 active relicensing. By 2020, that number will climb to 25 active relicensing projects. We estimate that Brookfield Renewable will incur \$3.3M to \$4.8M annually in relicensing process costs over the next five years. Additionally, a new license usually results in operating restrictions which lower generation output, while simultaneously increasing environmental enhancement costs. To that end, data compiled by the National Hydro Association since 1986 shows that relicensing project generation has declined by 10.7%<sup>i</sup> following mandated Protection, Mitigation and Enhancement Measures.

The challenge is especially acute with smaller dams and for smaller hydro operators. Small projects bring in less revenue compared to projects that generate more power, making it more difficult for small projects to absorb or recover the costs associated with licensing and any Protection, Mitigation and Enhancement Measures. The prospect of incurring relicensing process costs as well as increased operational costs and lost revenue resulting from the relicensing process, is leading some hydro operators to surrender licenses and/or decommission smaller projects. The associated reduction in capacity or project retirements reduce the country's renewable energy baseline, increase carbon and other air pollutant emissions, and eliminate the benefits these facilities deliver to the grid and local communities alike.

Providing FERC with the discretion to exempt certain small hydro projects from the relicensing process, while still providing prudent and necessary environmental oversight, is an important step towards streamlining the licensing process and recognizing the value these resources

provide. S. 1029 provides reasonable accommodation for resources that have no appreciable difference in their operations and are not within sensitive fish habitat.

We applaud Senator King's leadership on relicensing for small scale hydro and also wish to speak briefly to S. 1030, the Small Dam Information Act.

**The Small Dam Information Act**

While not directly impacting the majority of our portfolio, we understand S. 1030 seeks to study how requiring FERC licensing of small, non-powered dams balances with the challenges and burdens of the licensing requirements. As we noted previously in our testimony, FERC licensure can impose significant economic burdens. This is especially true for non-power producing dams, whose managers might choose to suspend ownership rather than progress through the licensing process. Such decisions have the potential to jeopardize the ecological and recreational value non-powered dams have provided to local communities and regions for generations. We understand this was an issue of particular concern for a dam manager in Senator King's home state. Again, while not directly impacting the majority of Brookfield Renewable's assets and operations, we believe understanding the barriers, costs and options available to licensed, non-power producing dams can only be helpful to policy makers and regulators who might consider future legislation on this topic.

Thank you for the opportunity to testify today and I welcome questions from the committee.

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<http://envirostewards.rutgers.edu/Lecture%20Resource%20Pages/Energy%20resources/Small%20Hydro/National%20Hydropower%20Association.htm>

Senator HOEVEN. Thank you, Mr. Wynn.  
I would also add that we received written testimony from FERC  
on Senator King's two bills, S. 1029 and S. 1030.  
[The information referred to follows:]



**FEDERAL ENERGY REGULATORY COMMISSION**  
WASHINGTON, DC 20426

May 9, 2017

**OFFICE OF THE CHAIRMAN**

The Honorable Lisa Murkowski, Chairman  
Energy and Natural Resources Committee  
United States Senate  
Washington, D.C. 20510

Dear Chairman Murkowski:

Thank you for the opportunity to comment on S.1029, a bill to amend the Public Utilities Regulatory Policies Act of 1978 (PURPA) to exempt certain small hydroelectric projects, and S.1030, a bill to require the Federal Energy Regulatory Commission to submit to Congress a report on certain hydroelectric projects.

S.1029

Section 405 of PURPA allows the Commission, by rule or order, to grant an exemption, in whole or in part, from the requirements of Part I of the Federal Power Act (FPA) to small hydroelectric projects having a proposed installed capacity of 10 megawatts (MW) or less. Although the term used in the statute is "exemption," an exemption does not represent complete deregulation, but rather is a simpler form of license. The Commission has issued regulations implementing the small project exemption authority. Currently, in order to qualify for an exemption, a project, whether proposed or existing, must result in increased capacity.

S.1029 would amend section 405 to provide that the Commission may issue exemptions to small projects that: are subject to a license issued after June 19, 1991; are located in an area that has not been determined to be critical to a species that has been listed as threatened or endangered under the Endangered Species Act; and have an installed capacity of 15 megawatts or less. New exemptions would take effect after the expiration of current licenses and would be subject to existing statutory limitations and environmental conditioning authority. The bill appears to allow the Commission to issue exemptions to these types of projects regardless of whether they increase capacity.

I have consulted with Commission staff and we are not aware that the inability of currently licensed projects to obtain exemptions at relicensing is a major issue for small project operators. Nonetheless, the expanded exemption authority could give added certainty and possibly improve the economic outlook for some licensees. I have one question about the bill. It appears to indicate that the Commission could continue to issue original exemptions to projects of 10 MW or less, but could issue exemptions on relicensing to projects of 15 MW or less. I am not certain why there should be a

distinction between new exemptions and licensed projects that are seeking to switch to exemptions; perhaps Congress could apply the 15-MW limitation in both instances.

#### S.1030

While most of the hydropower projects licensed by the Commission include generating facilities, there are some reservoirs included in licensed projects, and some stand-alone projects, that do not include such facilities, but rather serve the purpose of storing and releasing flows to facilitate downstream generation.

S.1030 would require the Commission to submit to Congress, not later than 180 days from the date of enactment of the bill, a report that: identifies non-powered storage projects; analyzes the value of generation and non-generation aspects of those projects; describes the ranges of options with respect to surrender or transfer of licenses; identifies barriers to surrender or transfer; and identifies the cost of license requirements relating to environmental protection, human safety, electric reliability, recreation, cultural resources, flood control, navigation, irrigation, and other matters.

The Commission will be pleased to submit to Congress any information it requires. It would be helpful to obtain clarification regarding some of the items to be covered by the report prior to the Commission gathering the information from our licensees. For example, is Congress seeking information about projects consisting solely of storage reservoirs, or also about storage reservoirs that are part of licensed generation projects? With respect to the analysis of non-power values, is Congress seeking the cost of environmental and recreational measures or their financial value? The latter may not be easy to establish, given the difficulty in placing an absolute value on environmental or other matters. For example, the value of a fish or of a recreational opportunity is generally considered to be highly subjective. In identifying barriers to license surrender or transfer, is Congress looking for general or project-specific information? Project-specific information may be difficult to obtain, since it will depend, in large part, on financial and other considerations faced by each licensee, which will vary from case-to-case and be best understood by licensees.

As to costs incurred by licensees, the Commission does include in licenses the estimated costs of environmental measures, recreation, cultural resource protection, and Commission-imposed flood control measures. The Commission does not impose electric reliability measures in licenses and so could have difficulty determining the costs of such measures. Likewise, the Commission does not typically require irrigation measures, which are usually governed by state water rights, and so we would not have information on this topic. Finally, as to measures to protect human safety, the Commission requires licensees to undertake whatever measures are required to ensure public safety at the time these issues are identified through the Commission's ongoing, thorough dam safety inspection program. These measures are required whenever they are necessary and are

imposed separately, rather than being determined during the licensing process and included in a license.

I hope that these comments have been helpful. Please do not hesitate to contact me if I can be of further assistance on this or any other Commission matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl A. LaFleur". The signature is fluid and cursive, with the first name "Cheryl" and last name "LaFleur" clearly distinguishable.

Cheryl A. LaFleur  
Acting Chairman

Senator HOEVEN. At this point we will go to questions. I am going to start the questions. I do have to go preside on the Floor at 3:30, so I am going to try to get through. I might go a little bit over my time, so I will ask the indulgence of the Committee. Thank you.

Senator Barrasso will be here to preside so that there will be plenty of time for all of you to ask any and all questions that you want to ask.

Mr. Fisher, I am going to start with my questions for you. Public access to public lands is an important issue to all of us and certainly it is important to Secretary of Interior Zinke. We know that.

You mentioned in your testimony the community's usage of the lake and other activities. Can you tell the Committee here today a little bit more about the public access the community currently enjoys at Patterson Lake and will continue to enjoy if this bill is enacted?

Mr. FISHER. Currently there are three main public access areas around Patterson Lake. Two areas are on the north side which include picnic areas, two boat ramps and a public beach. On the south side of the lake there is a picnic area, a boat ramp and then also access to the water for fishing. Fishing on the lake is actually a year-round thing.

The community also enjoys miles of natural and paved walking paths around the edges of Patterson Lake, and with those walking paths those are also used year-round.

Senator HOEVEN. Talk for a minute about the Dickinson Parks and Recreation Department and their continued commitment to public access and recreation.

Mr. FISHER. Just from the meetings with the Dickinson Parks and Recreation Department, they have addressed, in their letter of support, their efforts to enhance the access for the public there while they also talk about what they have managed for the Bureau of Reclamation over the years and how they have enhanced the opportunities and support for the public accessibilities.

Senator HOEVEN. They have submitted that letter for the record, correct?

Mr. FISHER. They have. Correct.

Senator HOEVEN. Which details their support.

In your testimony you mentioned that the Patterson Lake Homeowners Association currently pays permit fees to the Dickinson Parks and Recreation to help maintain public lands around the lake. In addition to local property taxes, if this bill was to successfully pass and the homeowners are able to purchase their lots, they will no longer pay the permit fees to Dickinson Parks and Recreation. So you will be paying increased property tax fees as owners then of the property to support the county and the school, but you will not be paying the permit fees. I know you are not part of the Dickinson Parks and Recreation Department, but do you know what their plan is to cover the costs without revenue from the fees?

Mr. FISHER. In the discussions I've had with the Park Director and the Board, they've planned to incorporate the operation and maintenance of Patterson Lake Recreation Area with their regular operating funds.

Senator HOEVEN. Okay, so they have that covered?

Mr. FISHER. They've been planning this for years.

Senator HOEVEN. Okay, is there anything else that you want to elaborate on as far as the history or anything else regarding the homeowners and the lots that are on Patterson Lake in their development? Any other thoughts?

Mr. FISHER. Yeah. The original cabins and structures, they were originally built in the 1950s and 1960s and they were all constructed being seasonal use structures. Over the years, as the homeowners have lived there and the homes have changed hands, you know, people have added on to the actual cabin lots and sites by planting trees, establishing lawns. They've also helped maintain the shorelines to help slow the causes of erosion.

And over those years, as things have happened, we had a chance many years ago to actually choose to become full-time, permanent residents which, unanimously, everybody chose to be full-time, permanent residents. And with that choice, over the years, those structures have grown into being beautiful, beautiful homes which you've seen when you were out there.

Senator HOEVEN. I have been there. I have seen the homes, they are very nice homes. An incredible amount of improvements around the lake from riprap, trees, yards, like you are saying—really a beautiful place. And these are full-time, permanent residences, no question.

Some questions for Secretary Cameron. Secretary Cameron, you mentioned in your testimony the Bureau of Reclamation acquired the lands needed to construct the Dickinson dam and reservoir and fulfill the authorized project purposes. My question, is the Bureau property under consideration in this bill necessary to fulfill the project purposes of the Dickinson unit?

Mr. CAMERON. Senator, we don't see any problem in terms of impairing the future operations of the Reclamation project or this legislation to move forward. We've got a very good, long-standing relationship with local residents, with Dickinson Parks and Recreation, and we don't see any impediment to our operations.

Senator HOEVEN. Secretary, I want to thank you for being here today. Thank you for your testimony on S. 440. I appreciate your feedback on the bill and will continue to work with you on your suggestions.

I want to note that at the introduction of S. 440 we were contacted by the North Dakota Game and Fish Department regarding the land that it leases from the Bureau. We have taken that feedback into consideration and have worked with North Dakota Game and Fish to produce language that would also allow them to be conveyed the land that they currently lease. So we will work with the full Energy and Natural Resources Committee to include the updated language.

I also am submitting a letter from the North Dakota Game and Fish Department in support of this legislation, S. 440. I also would like to make note of letters of support for S. 440 from the Dickinson Parks and Recreation, the City of Dickinson, and the Stark County Board of Commissioners and want to make them part of the record as well.

[The information referred to follows:]

**NORTH DAKOTA  
GAME & FISH  
DEPARTMENT**

*"Variety in Hunting and Fishing"*

*GOVERNOR, Doug Burgum*

*DIRECTOR, Terry Steinwand  
DEPUTY, Scott A. Peterson*

*100 North Bismarck Expressway  
Bismarck, North Dakota 58501-5095  
Phone: (701) 328-6300  
FAX: (701) 328-6352*

May 2, 2017

The Honorable Ryan Zinke  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

RE: S. 440

Dear Mr. Secretary:

A number of months ago, it came to our attention that there was action underway to convey U.S. Bureau of Reclamation (USBR) lands to private landowners and local park districts around Patterson Lake near Dickinson, North Dakota. During that process, there was concern that properties under lease from the USBR by the State of North Dakota (State), and through the North Dakota Game and Fish Department (Department) for purposes of providing offices, shop, and storage space for staff, might be affected if the lands were purchased by a private entity or transferred to the local park district. Contact was made with Senator John Hoeven's office, and he and his staff were gracious in receiving input, then amending the bill to ensure the proposed transfers meet the intended purposes.

As a result of the amendment, the Department supports S. 440 and, in particular, Section 4 (B), which allows transfer to the land currently under lease from USBR to the State without cost. This transfer would not affect any local taxes since the Department pays full taxes on properties owned and managed through our in lieu of tax program.

Thank you in advance for your support of this bill.

Sincerely,



Terry Steinwand,  
Director



701-456-2074  
 Fax 701-456-2073  
 2004 Fairway Street  
 Dickinson, ND 58601  
[www.dickinsonparks.org](http://www.dickinsonparks.org)

May 3, 2017

Honorable Ryan Zinke  
 Secretary of Interior  
 US Department of the Interior  
 1849 C Street NW  
 Washington, DC 20240

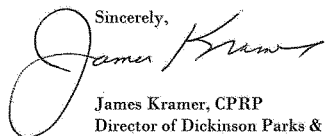
Dear Secretary Zinke:

On behalf of Dickinson Parks and Recreation, I submit this letter of support for Senate Bill S. 440. We have worked closely with the Bureau of Reclamation, Patterson Lake Homeowners Association, and Senator Hoeven's Office during this process and support their efforts.

Dickinson Parks and Recreation has worked cooperatively with the Bureau of Reclamation since 1953 to manage Patterson Lake Recreational Area. We have worked hard over the years to increase and enhance recreational opportunities as well as support public accessibility. Patterson Lake has three boat ramps, beach, modern and primitive campgrounds, 1.8 miles of paved shared use path, 8 miles of nature trail, a championship disc golf course, numerous picnic shelters and acres of wildlife and greenspace. This facility is a tremendous resource to Dickinson and Southwest North Dakota, and we look forward to continuing that for many years to come.

Dickinson Parks and Recreation is a political subdivision separate from the City of Dickinson with its own tax levying authority. The Board of Park Commissioners are elected to four year terms by the citizens of Dickinson. The Board administers the mission of the Department which is to "Provide recreational opportunities to enhance the quality of life for the community and its visitors." This bill, sponsored by Senator Hoeven, will further enhance the mission of the Department and maintain, or increase, public access to the Patterson Lake Recreation Area.

Thank you for the opportunity to submit this letter of support for Senate Bill S. 440. I would be happy to provide you with any additional information or answer any questions you may have.

Sincerely,  
  
 James Kramer, CPRP  
 Director of Dickinson Parks & Recreation

# CITY OF DICKINSON

99 2ND STREET EAST • DICKINSON, ND 58601  
701.456.7744 www.dickinsongov.com fax 701.456.7723

- Administration
  - Assessing
  - Finance
  - Information Technology
  - Licensing
  - Utility Billing

May 4, 2017

- City Attorney
  - Human Resources

Honorable Ryan Zinke  
Secretary of Interior  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC

RE: S.440

- Development
  - Building Department
  - Code Enforcement
  - Engineering
  - Planning

Dear Secretary Zinke:

On behalf of the Dickinson Board of City Commissioners, I am writing to express my support for the bill introduced by Senator Hoeven which will have a hearing before the Senate Energy and Natural Resources Committee on May 10, 2017.

- Fire Department  
701-456-7625  
www.dickinsonfire.com

- Library  
701-456-7700  
www.dickinsonlibrary.org

- Municipal Court  
701-456-7726

- Museum  
701-456-6225  
www.dickinsonmuseumcenter.org

- Police Department  
701-456-7759  
www.dickinsonpd.com
  - Animal Shelter  
701-456-7039

This bill will allow the home/cabin owners around Patterson Lake the opportunity to purchase the land under their residences, transfer lands managed by the Dickinson Parks & Recreation Department to their ownership, and also transfer land to the State of North Dakota where an office for the ND Game & Fish Department is situated. The passage of this bill will provide more security for the home/cabin owners in that they can secure loans to make improvements on their homes and/or sell them to other individuals, who could then obtain mortgage financing. The transfer of the lands to the Park Department will provide more flexibility to them as they continue to provide recreational services to the citizens of Dickinson, Stark County, and the surrounding region. The additional transfer of the land to the State of North Dakota will also relieve the U.S. Bureau of Reclamation from the responsibility of being an ongoing landlord, something I understand they would love to get out of.

Patterson Lake and the surrounding land falls within the City of Dickinson Extra-Territorial Jurisdiction and, as such, the City already has zoning and building code jurisdiction for that area. The city took the lead in the development of the Crooked Crane Trail, immediately north of Patterson Lake. The city has a vested interest in seeing the area is properly maintained and will work with the Park and Recreation to ensure the continued recreation activities at and around the lake that our citizens have long enjoyed. Based on my knowledge of the community, there has been no opposition to this land transfer and as such, I express my strong support for this bill.

Sincerely,



Scott Decker, President  
City of Dickinson Board of City Commissioners

- Public Works  
701-456-7979
  - Building & Sites/Cemetery
  - Forestry
  - Street and Fleet
  - Solid Waste
  - Water Reclamation Facility c:
  - Water/Sewer/Storm Water Utilities

Senator John Hoeven  
Shawn Kessel, City Administrator

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## Mission

*Celebrating small town values, promoting opportunity, and enhancing quality of place through community partnerships and exceptional public services.*



May 3, 2017

Honorable Ryan Zinke  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC 20240

RE: S.440

Dear Secretary Zinke:

At the formal meeting of the Stark County, North Dakota Board of Commissioners on Tuesday, May 2, 2017, the Board voting unanimously to support the bill sponsored by Senator John Hoeven that would allow the homeowners around Patterson Lake in Stark County, ND to purchase the lots under their homes. It is our understanding that this bill will also transfer the lands managed by the Dickinson Parks & Recreation Department to them as well as a small parcel to the State of North Dakota where the North Dakota Game & Fish Department has an office and shops.

We have been aware of the issue and concerns of the homeowners at Patterson Lake for a number of years and fully support their efforts and the bill sponsored by Senator Hoeven. It is my understanding that there will be a hearing before Senate Energy and Natural Resources Committee on May 10, 2017 and we want to make sure that you are aware of and understanding of our position.

Based on information provided to the Commissioners by the homeowners at Patterson Lake and other stakeholders, we feel that this bill is a win-win. The homeowners will be able to have certainty and stability through the purchase of the land under their homes and the sale to the homeowners and the transfer of the other lands to the Park Department and the State will have no adverse impact on the citizens of Stark County or the region. The lake, recreation areas, and golf course are heavily used by the public and there will be no adverse impact on the public as a result of this bill. Furthermore, Stark County and the Dickinson School District will also receive direct benefit from the bill. The homeowners already pay ad valorem taxes to Stark County and the School District based on the assessed value of the structures, plus a small possessory interest tax for the land. Once they own the land, they will be fully taxed on the assessed value of the land, in addition to the structures, and this will provide some additional revenue for both Stark County and the School District.

As we have not received any negative feedback regarding this proposed action and as it will be a benefit to all parties, on behalf of the Stark County Board of Commissioners, I am in full support of S.440 as sponsored by Senator Hoeven.

Cordially,



Jay Elkin, Chair  
Stark County Board of Commissioners

Senator HOEVEN. Does the amended language I mentioned which would provide conveyance of land permitted to cabin owners and land managed by the Dickinson Parks and Recreation to extend to the North Dakota Game and Fish Department alleviate your concerns regarding, "fractionated ownership with continued Reclamation oversight responsibilities and costs," that you referenced in your testimony regarding the North Dakota Game and Fish leased land?

Mr. CAMERON. Yes, Mr. Chairman, that would be very helpful and we appreciate your doing that.

Senator HOEVEN. Okay. I would also note that the concern raised in your testimony regarding liability is also addressed in the amended language, and I welcome any feedback that you may have on it once you and whoever at Interior needs to take a look at it does so.

Again, you have been absolutely fantastic to work with in this process. We will continue to make sure that we address anything that you bring forward to us, but I do want to thank you very much.

Mr. CAMERON. Thank you very much, Mr. Chairman. We appreciate your response on this and your willingness to move ahead here to benefit the community and the homeowners.

Senator HOEVEN. Also, Mr. Fisher, thank you for being here and for your good work.

I do have other questions from Chairman Flake, but I am going to turn those over to Senator Barrasso as well as the gavel at this point and turn to Senator King for his questions.

Again, thanks to all of you.

Senator KING. Mr. Chairman, I understand that Senator Heinrich has a commitment in a short time, so I am going to yield my first round of questions to him.

Senator Heinrich.

Senator HEINRICH. Thank you, Senator King. I will point out that the Acting Chairman has said how beautiful this lake is, but he said nothing about the fishing and I find that very much out of character, but we will solve that later.

I want to turn back to S. 1012 and really start by thanking Senator Udall for the incredible work that he and his staff have done on this legislation over time. It has been an absolute pleasure to work with him on this legislation.

As my first question, I was going to ask Mr. Hamman to walk through some of the things the District has done to deal with the drought conditions that we have seen for a number of years now. I think you have effectively done that, but I want to take this as an opportunity to commend you and commend your board members.

We have seen more proactive measures taken in the last couple of years than in many, many years before. It really is, I think, a testament to your board members and your leadership just how active you have been on this front and how much progress is being made. So I want to say thank you.

Mr. Hamman, how might we facilitate water leasing as we are looking at setting up a pilot project? How do we make sure we do

that in a way that is beneficial for water rights holders as well as for the natural environment?

Mr. HAMMAN. Thank you, Mr. Chairman, Senator Heinrich.

The process that I think will work, at least in the initial stages of getting this program up and running, would be to work closely with the state engineer's office and Reclamation and the National Fish and Wildlife Foundation to do an inventory to fully determine the extent of the pre-1907 water rights that are in the basin.

And then have an outreach effort for the owners of that, of those rights, to encourage the opportunity for them to, in lieu of outright transfer and sale and severance of those rights from the land, to actually have another alternative for them to achieve some kind of an income stream to work directly with the District through a water bank that we would likely manage and would relish the opportunity to manage, quite frankly, in addition to the water bank we currently manage, to afford those folks that opportunity.

And then we would work with various NGOs and Reclamation and others to determine how an instream flow process might work and how you convert an irrigation right that doesn't have storage rights to a storage right that can be used in a way that can protect the species of interest during the summer months when we have the most trouble——

Senator HEINRICH. Right.

Mr. HAMMAN. ——keeping the river from drying out below Isleta Diversion Dam. So that would be the focus that we'd work on there.

Senator HEINRICH. Excellent.

Before my time is out, I want to switch over to Mr. Cameron real quickly. Can you talk a little bit about how the Bureau has used water leasing in other basins to help ameliorate some of the drought stresses that some of our basins are under?

Mr. CAMERON. Senator Heinrich, I'm probably best advised to give you a more detailed response for the record.

Senator HEINRICH. Okay.

Mr. CAMERON. I will say more generally, however, that we strongly support the notion of water leasing—any way that one could use markets to move water around consistent with state water law is advantageous to everyone involved.

So we strongly support the notion, and I can give you, perhaps, a detailed example for the record.

Senator HEINRICH. That would be just fine.

Real quick, my last question for you, Mr. Cameron. Would greater flexibility in authorization language for dam and reservoir management help the Bureau better respond to droughts?

Mr. CAMERON. Yes, I think it would, Senator. And we welcome that, that would be helpful. Frankly, a drought situation needs as much flexibility as you can get your hands on.

Senator HEINRICH. Yes, I hear you.

Thank you very much. Thanks to all of you for your testimony and for being here today.

Senator BARRASSO [presiding]. Thank you, Senator Heinrich.

Senator DAINES.

Senator DAINES. Thank you, Mr. Chairman.

I want to start off by welcoming back Mayor Jeff Sell. As the Mayor of Harlowton, right there in Wheatland County, you know first-hand the challenges of lacking access to clean water. Unfortunately, during your last visit here to speak on behalf of your community, you were caught up in all that is wrong with Washington, DC. You flew all the way out here to share your story and be the voice for rural Montana and for rural America, and you were not allowed to speak.

I want to thank you for returning here to share your thoughts. You had to bear additional expense and share your insights on this critical issue that affects thousands of Montanans.

Water is a basic need of life. There are rural communities in Montana that lack access to the basics of clean and reliable drinking water. In fact, if you look at this—I have a picture here I am going to show in a minute—you are going to see what the quality of water is like in one of the affected communities in Montana. I will have Steven put that up.

[The information referred to follows:]



This is a picture from Roundup, and you can see when you open up a hydrant what we got out of there in Roundup, Montana. In fact, I have water samples here that were taken from kitchen sinks in Circle, Montana, just East of Harlowton and a little bit, well, pretty much due East. Here is one from the Hans Family, taken out of their faucet. Here is one from the Good Family. Here is one from the Arneson Family. I have more, but I told my staff member, just give me three. I could show you many, many more samples just like it. These samples were taken from the kitchen sinks in Circle, Montana. We are not talking about a Third World country, we are talking about the United States of America. We are talking about Montana.

In light of that, I have introduced Senate bill 685, the Clean Water for Rural Communities Act, with my colleague from Montana, Senator Tester. This bill would authorize two Bureau of Reclamation rural water projects critical to Montana, the Musselshell-Judith Rural Water System and the Dry-Redwater Regional Water Authority System. Authorizing these two projects would be an important step in providing clean and safe drinking water to nearly 36,000 Montanans and North Dakotans.

Mayor Sell, Harlowton has serious issues with the wells used to provide your town with water. Unfortunately, Harlowton is just one example of numerous communities in Central and Eastern Montana that are facing severe drinking water challenges. The Musselshell-Judith Rural Water System would provide a clean and reliable water supply to your area, and I am impressed by the fact it has a demonstrated benefit-to-cost ratio of 1.28 to 1.

So my question, Mayor Sell, is what benefits can we expect to see if we were to approve this project?

Mr. SELL. Mr. Chairman, Senator Daines, we realize that authorization of this project does not get us any funding from the Federal Government at this time. But to use Mr. Cameron's words, it would allow us to get in the queue at the Bureau of Reclamation for future funding, if that did become available.

Reclamation entered into numerous agreements with the CMRWA over the last 12 years to put this water system together. Reclamation has committed time and money, roughly \$700,000 to this project already.

Basically, with the short construction season that we have in the State of Montana, if this project were authorized we would be able to access state and local funding to get this project started and then if our current administration does provide infrastructure funding, like has been talked about numerous times over the last few months, we would have a project that would be completely shovel ready and we could get this project built in a very short amount of time.

Senator DAINES. I think that is something that folks lose sight of when you are from a northern state. We sometimes say we have nine months of winter and three months of bad sledding.

Mr. SELL. Correct.

Senator DAINES. So, to restate, what could be accomplished with authorization, even if the federal dollars were not appropriated?

Mr. SELL. We would be able to get, probably, design. We would be able to get land access rights and the design of the first phase

of the project completed and possibly even get water to the first two communities in the first phase of the project which are Judith Gap and Harlowton.

Senator DAINES. Alright. Thank you.

I have some more questions, Chairman, but I am out of time. Thanks.

Senator BARRASSO. Senator King.

Senator KING. Thank you, Mr. Chairman.

Mr. Cameron, S. 677 looks like a very sensible bill in terms of it providing a coordination of a one-stop shop. Is this in any way duplicative of processes that you already have, or do you think this would be useful authority?

Mr. CAMERON. Senator King, I do think it would be helpful. One of the challenges that we have as a Federal Government, and frankly state governments as well, in environmental reviews is that different agencies run their own processes along their own timelines, very often difficult to coordinate. They, way too often as I suspect you learned in your experience with hydropower in New England, are done sequentially as opposed to simultaneously.

So we think this legislation would help control the expense and the duration of environmental reviews. And that, I think, would benefit the environment and would also certainly benefit the project proponents.

Senator KING. I completely agree and we incorporated changes in our own law in Maine when I was there to do just this. One of the problems with the sequential is you can need 27 permits and if you get them all except 26, you are out of luck and you have made an enormous investment.

I think anything we can do in the way of one-stop shopping, coordination in one lead agency, would be beneficial. I complement the Chairman on this bill. I think it is something we are going to have to look carefully at and be sure the language works, but the concept, I think, makes a lot of sense.

Mr. CAMERON. If I could elaborate, Senator. Sometimes agency number 17 wants a change that's inconsistent with agency number 5 and you find yourself in an endless do loop which makes matters even worse.

Senator KING. And that is when we get into these 10-, 12- and 20-year permitting processes which really do not serve any purpose, in my view.

Mr. GABRIEL, do you have any objection to S. 930? You talked about the changes you have made in terms of transparency and clarity of your work. Do you welcome this bill or do you view it as unnecessary?

Mr. GABRIEL. Well, we believe that this bill is in line with what we are looking at in terms of transparency. The only concern that I would express is we want to make sure that whatever is in the bill is actually answering the questions that the customers have because we can be chasing lots of information and then still not have folks satisfied.

So we've been working carefully with Senator Flake's staff and we'll continue to do so. I'm all for transparency. Everything we've been doing in the last four, four and a half years, is moving down that path. So we have no issues with the bill itself. I just want to

make sure that the details are well spelled out so we're answering the right questions.

Senator KING. Thank you.

Mr. Wynn, you mentioned you have both wind and hydro. One of my concepts for many years is the use of hydro as the battery for wind in terms of intermittency. Are your projects adjacent in a way that you could do that or is that a conceivable concept at some time in the future?

Mr. WYNN. I believe it is, Senator. You could combine the hydro and the wind so when the wind isn't blowing you could, kind of, offset or complement with hydro generation. I think that's—

Senator KING. As I recall, most of your hydro is run-of-the-river though, isn't it, or do you have storage?

Mr. WYNN. We do have several storage facilities, especially in the headwaters of the Penobscot, Kennebec and Androscoggin Rivers.

Senator KING. So that would definitely be a place where you could pair that with a wind project?

Mr. WYNN. Absolutely.

Senator KING. Where you have the storage.

Talk to me about the costs of relicensing a small project. I mean, it was striking what you said: that the relicensing of a one megawatt dam is the same as for a 1,000-megawatt dam. That really strikes me as very, very difficult. Tell me about that situation.

Mr. WYNN. The cost for a small facility for relicensing can be a very big burden. Small facilities earn less revenues, generate less cash and therefore, the owner or licensee of a small facility would have a difficult decision to make if you're burdened or facing significant relicensing costs. The amount of time to recover that would just be a long period of time. And then you're making the tough decision if you should surrender or decommission a facility.

Senator KING. And isn't it true that we are in danger of losing significant hydropower by people that are just saying, "I can't afford the capital investment involved in a relicensing," and we lose the power?

Mr. WYNN. I think that's right. I think that some of the small facilities face that burden.

Senator KING. The second bill that I have in is essentially a study of the relicensing of storage dams, of non-powered development. Do you see that as useful, for generating useful information?

Mr. WYNN. I do. I think—we own and operate several storage dams in the State of Maine. I think they provide great benefit, and just having a better understanding of them would be a good thing to know.

Senator KING. But again, if a storage dam doesn't produce any revenue, it makes the challenge of justifying the relicensing even greater.

Mr. WYNN. Yes, absolutely. That's correct.

Senator KING. Well, I have to say one of the reasons I submitted this bill is I think this is a problem generally. We legislate around here for everybody. For example, financial regulation that is designed for big banks ends up hitting credit unions and small community banks with an equal regulatory burden that is way disproportionate to what those institutions are doing. So this is ex-



actly the same problem. We are aiming it at this small hydro relicensing.

I appreciate your testimony, and I appreciate your management of those great resources in Maine. As you said, I think it is one of the largest privately-owned hydro systems in the country, and very much a part of our history. I want to thank you for coming and testifying before us today.

Mr. WYNN. Thank you, Senator.

Senator KING. Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator King.

Senator Daines, you had a last question?

Senator DAINES. Yes, thank you, Mr. Chairman.

I have one question that I wanted to ask, it is for Mr. Cameron. Congress passed the Rural Water Supply Act to establish and carry out a rural water supply program in Western states. After 12 years and over \$3 million spent by the Federal Government, the State of Montana and local communities, the Musselshell-Judith Rural Water System was found to be feasible and to have met the broad criteria of the program. Yet the Bureau of Reclamation will still not recommend this project for authorization. Mr. Cameron, what good does a feasibility approval do if the project will not be authorized?

Mr. CAMERON. Senator, I completely am sympathetic with the basis of your question there.

Our—we certainly recognize the fact that there's a positive benefit cost ratio with this project. And were there, if an amount of funds were available, I think, yeah, we'd align it to fund it.

Our concern really is reflecting the fact that Congress has authorized a number of projects already, well in excess of \$1 billion. Roughly, \$50 million is being appropriated every year and we're concerned, frankly, about raising expectations which we might not be able to fulfill through the appropriations process.

But I certainly agree that this is a good project. I certainly agree that no one should be asked to drink brown water, you know, such as you've exhibited here in the photographs. And we're very sympathetic with the plight that these communities in Montana are facing. Secretary Zinke has underscored that for us on more than one occasion, I might add.

Senator DAINES. Yes. My concern is that we are stewards of taxpayer dollars to make sure the resources that are devoted to the development of these projects, they are not just wasted. You go through all these feasibility studies and so forth and then no action is taken.

Mr. CAMERON. I would agree with you. I think to some extent this is consistent with some of the subject matter of S. 677 in that there's an excessively prolonged evaluation process. And I think, perhaps, having a better understanding up front what the project proponents, about the sort of obstacles that they're facing, and trying to expedite the reviews would be beneficial for everyone involved.

What's happened with these two projects in Montana, unfortunately, is history. You know, at this point we can't wind the clock back 10 or 15 years and start over.

Senator DAINES. Well, I am glad you are there now and I am sure as we go forward here, we are looking forward to making progress.

Thank you, Mr. Cameron.

Mr. CAMERON. Yes, sir.

Senator BARRASSO. Senator Manchin.

Senator MANCHIN. Thank you, Mr. Chairman.

Mr. Wynn, this will be for you. You met with the West Virginia Alloy Manufacturing Company on June 9th.

Mr. WYNN. The company did, Senator. I'm responsible for operations in New England, but other members of the company did.

Senator MANCHIN. Oh, okay.

I was kind of happy that we were tied together with New England and Maine.

Contrary to what some people believe, West Virginia is not just all about coal. A lot of it is about coal, but we have an "all-in" energy policy.

The meeting was about the release on the flow levels at the Hawk's Nest hydropower facility in New River in Fayette County. The American Whitewater Association is proposing increased releases and flow from the facility which would increase rafting access for about one and a half miles. If that proposal is successful it would impact the level of electricity produced by the dam. Therefore, the West Virginia Alloy Manufacturing Company could face increased costs of at least a half a million dollars a year because they would need to purchase power from American Electric Power (AEP) at a much, much higher cost.

Now the following questions will give you an opportunity to address these concerns we have and I am sure you are familiar with them on this project. Brookfield Renewable owns and operates at Hawk's Nest and Glen Ferris facilities.

Mr. WYNN. That's right.

Senator MANCHIN. Correct. And that is on New River.

It is my understanding that they are currently working through FERC relicensing, which we know the challenges we have there, for several licenses for those two projects which provide clean, affordable power to the community. I think both projects are how many megawatts? One? Less than ten?

Mr. WYNN. I don't know, sir, off the top of my head.

Senator MANCHIN. Oh, okay. They are very small.

I recently met with West Virginia Alloy Manufacturing Company which employs 240 people and has an 80-year history producing high-quality silicon for the chemical, metal and solar industry which is very little of that produced in this country right now.

The company's production process is very energy intensive. Potential loss of a portion of that supply is concerning to these folks. The reason it is concerning is they have, with the 240 employees, about \$1.1 million in taxes. They are talking about a release that would cost them half a million dollars.

We have a lot of rivers to raft on, and I am all for the rafting industry and all for the recreational industry, but there comes the time when you put a pencil to it and a chance of losing 240 jobs and taxes of \$1.1 million. Does it make sense? I mean, they are

going through this process and there is a chance they might not be relicensed.

Have you all done economic impacts? Are you showing the economic impacts?

Mr. WYNN. I apologize, I'm not very familiar with that relicensing. I know that, generically speaking, when we go through a relicensing process we work with various large groups of stakeholders. In this case, the facility you're speaking of, the whitewater rafters, other groups, recreation groups, environmental groups, et cetera.

So, I apologize for I won't be able to speak to the details of that facility. But generally speaking, we work very hard to work with all groups, economic impacts, recreation, environmental.

Senator MANCHIN. No, but I am saying, I do not know what the highest priority is from FERC. We are asking for a relicensing here to continue to operate as it has operated for over 80 years.

Mr. WYNN. Correct, sir.

Senator MANCHIN. There has not been any rafting in that one and a half miles for 80 years. We have hundreds of miles of rafting available, but I have 240 jobs at stake for that one and a half miles, that is all I am asking.

There has got to be some common sense somewhere, maybe Mr. Cameron, do you have any?

I meant, not common sense, I meant—

[Laughter.]

Senator BARRASSO. Let the record reflect the question has been clarified.

Mr. CAMERON. On more than one occasion, Senator, I've been accused of not having any common sense.

Senator MANCHIN. Well, we found out it is not real common here in Washington, so do not be surprised.

Mr. CAMERON. Yes, sir. I was actually sitting here listening and I was saying to myself, the Senator has got a great point. This doesn't make a lot of sense.

Senator MANCHIN. You know, I really agree. Senator King's bill, S. 1029, it is a great bill, a great piece of legislation and I do not know why—do you know where we are on that Senator, if you can bring me up to speed?

Senator KING. The good news is it is co-sponsored by the Chairman of the Subcommittee. That is always a good sign.

Senator MANCHIN. That should make it fly.

Senator KING. I hope.

Senator MANCHIN. Anyway, I think some of these certificates, recertification—and they take into consideration the size, the proportion of what we are asking for and the amount of cost—it is just wearing people out, it just wears them out.

We have an "all-in" energy policy in West Virginia. We want all the hydro we can get. We want all the wind and solar. We have the coal. We have been blessed with coal and natural gas. We have a little bit of everything, and we want to use everything to the best of our ability, but sometimes our own government gets in our way and makes it very hard for us to do what we need to do.

The cost of electricity in West Virginia has gone up because 90 percent of our power was coming from coal and the overreach of

regulation from the Obama Administration drove the price through the sky and never cleaned up one thing. We have already taken on all the new regulations but the cost now has doubled in West Virginia, a 50 percent increase.

This little project is so important for the economics for it to work there. If it does not, it will not work. So I am preaching to the choir, I think. Okay, thank you.

Senator BARRASSO. Thank you, Senator Manchin.

Well, I am pleased to be here at this first Water and Power Subcommittee hearing of this Congress. I am glad all of the witnesses have made it back today. And we all agree good, clean water with strong, reliable infrastructure is essential for communities all across America.

Since the beginning of this year, the Full Committee, alone, has held more than five hearings focused on infrastructure. We have heard from experts across the country in a variety of fields from electric utilities, our national labs and water conservation districts. The common theme in recommendation we received is that the current federal permitting process is broken and needs improvement.

That is why we are here today to discuss a number of bills, one of which is S. 677, the Water Supply Permitting Coordination Act. It is also known as the "one-stop shop." This bill is going to streamline the current multi-agency permitting process which often draws out and delays the construction of new surface water storage by creating this one-stop shop permitting process at the Bureau of Reclamation.

Mr. Cameron, I want to thank you for your testimony on this bill. I appreciate you taking the time to work with my staff to discuss and get a better, fuller understanding of the bill. The bill seeks to clarify what is currently a timely and confusing permitting process for many.

I noted the comments and the suggestions in your written testimony that we can use to strengthen the bill. Would you be willing to continue to work to address some of those points in your written testimony?

Mr. CAMERON. Absolutely, Senator Barrasso. We'd be delighted to do that.

Senator BARRASSO. Great, I very much appreciate it. We would be happy for you to work with my staff helping iron out some of the details.

Mr. Davis, I want to thank you for your support of this bill, S. 677. There is certainly a need for additional water infrastructure across the West. As the general manager, as you are, of the Yuma County Water Users' Association, you work closely with the Bureau of Reclamation and it is the agency in power to coordinate new projects under the bill. Will you please describe some of your experiences with the Bureau of Reclamation and why you think they are the appropriate lead agency for this type of effort?

Mr. DAVIS. Well, the era of dam building was thought to be over a number of years ago, Senator Barrasso, but recent drought has proven in the West that new storage infrastructure is going to have to be built to meet the ever-increasing demands of water in the West. And the Bureau was the key entity, the key agency all those past years to developing the West. That's why the Reclamation Act

was formed, passed in 1902, reclaimed the West and then the first thing necessary was water supply and building dams.

I think it's recognized, from California to Oklahoma, that to survive long-term droughts we're going to need more storage because of the population growth in the West. It's natural that the Bureau of Reclamation is the agency to go to for that because traditionally they're the experienced agency in being able to do this.

The challenge for them is being able to regulate and manage and wrangle these other federal agencies that are, sort of, Johnny-come-lately to the process of building dams and they have other interests other than just building dams to impound water for public use.

And so, the Bureau is the obvious agency to be in charge of this process, to set timelines and controls on the other agencies to get the permitting process.

I think that if this is implemented it's not going to have any negative impact on the NEPA process and the other federal laws that are required to build this infrastructure. It's, like Mr. Cameron said, it's a time factor that it allows the Bureau to put these folks and these other agencies in shape in a timely manner to get their processes done.

Senator BARRASSO. In your answer you used the word timelines, time and timely. Could you just talk a little bit about why you think the timeframes set forth in this bill are important?

Mr. DAVIS. I think the timeframes are important just because of the cost that the time, extended timelines, it finally—those entities that are trying to get these structures constructed either run out of money, run out of time, run out of interest, run out of, you know, it's finally—the stalling process can have an effect of completely stopping a project from ever getting built. And so, the timeline is important.

The other important thing about this bill, it allows the states to be involved. These projects have been and often involve, not only federal land, but state land and private land, and the states are often the ones that are stuck with the later management of some of these areas and it allows the states to help speed up the time process maybe by pumping some money into the process and maybe also putting in some timely information as far as data and scientific studies. So it allows the states to be a partner there and be involved which is, I think, absolutely necessary to get one of these projects done in the future.

Senator BARRASSO. Yes. I would also like to ask a couple of questions on behalf of Senator Flake who, as you know, has been pre-occupied with the tragic events that took place earlier today.

To you, Mr. Davis, this is a question from Senator Flake about the Western Area Power Administration customers who are interested in providing input into the capital investment projects. But it doesn't sound like there is a similar input in the operations and maintenance budget. Would you please run through some of the customer concerns and frustrations with the lack of transparency on headquarters' O&M budget?

Mr. DAVIS. Yes, you know, the customers have always had pretty good input, at least some veto power into the capital projects, and we review those annually on a 10-year basis.

It seems that our cost increases and the cost increases to my WAPA transmission costs have been about six percent a year for the last five years. And it seems to be most of that is in the operations and maintenance side of the equation which we have very little input into.

I like the idea of transparency, but I like even more the idea of customer involvement. And that's one thing that we're working out in the Desert Southwest region of Western. We have a very customer-oriented manager there and he's been very open. He's been supportive of Mr. Gabriel to be very open, to the customers involving themselves in the process, not only of helping select capital projects to be put into the 10-year queue, but also to looking at staffing needs and other type O&M costs that are ongoing.

We want to be careful with this transparency legislation, that it is meaningful but it doesn't increase cost to the point that it's not economic to do so.

So we want transparency, but we also want to be actually involved in, somehow, decision-making in the process. And this technical, Customer Technical Committee we've put together working with the Desert Southwest Office, I think, is going to get to the bottom of this. I think it's going to be a good example or a good showcase for other regions to follow to get more customer involvement to help control rates and yet do the necessary maintenance and operation that needs to be done. We're not trying to let our systems run down. We want them to be maintained, state-of-the-art, but we want the money to be spent efficiently.

Senator BARRASSO. Well I appreciate all of you here. I am going to submit a couple additional questions from Senator Flake for the record, and I am going to have one for you, Mr. Cameron, that I will also submit for the record. There are a couple reservoir projects in Wyoming that are well behind schedule due to lengthy federal approval processes. On May 2nd I sent a letter to the Acting Director of the Bureau of Land Management asking about the status. We have not received a response yet. I am hoping that you can help make sure we get that response in a more timely manner, and we will submit that in writing.

Mr. CAMERON. Yes, sir, I'll follow up when I get back to the Department as well.

Senator BARRASSO. Thank you very much.

Well, thank you all for being here today. This is a great start for the work of this Subcommittee that we are going to do during this Congress.

For the information of other members, questions may be submitted for the record before the close of business on Thursday. The record will remain open for two weeks. I hope you will be able to get your questions submitted to us in a quick manner. We ask the witnesses to respond promptly when you do.

I thank all of the Subcommittee members who are here as well as those of you who were able to appear to testify. We apologize for the inconvenience it caused you earlier, and thank you all very much for being with us today.

The hearing is adjourned.

[Whereupon, at 3:58 p.m. the hearing was adjourned.]

## **APPENDIX MATERIAL SUBMITTED**

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**U.S. Senate Committee on Energy and Natural Resources  
Subcommittee on Water & Power  
June 14, 2017 Hearing: Pending Legislation  
Questions for the Record Submitted to Mr. Scott Cameron**

**Questions from Senator John Barrasso**

**Question 1:** Could you please provide me with an update on the status of the Leavitt Reservoir Expansion project and the Alkali Creek Reservoir project reviews underway in the Bureau of Land Management's D.C. office?

**Response:** The Leavitt Reservoir Expansion project and the Alkali Creek Reservoir project Notice of Intents (NOIs) are currently under final review by the BLM and the Department. Both of the proposed projects aim to either construct or expand reservoir resources to assist in late season irrigation, alleviate flooding concerns and provide recreational use. Not only is the Leavitt Reservoir project proposal a component of Governor Mead's 2015 Wyoming Water Strategy, but both projects also provide support for traditional uses on public lands like ranching, farming and angling. We recognize the importance of serving our local communities in this way and I have been informed that the BLM is working on these notices as expeditiously as possible.

**Question 2:** Could you also provide when the Notice of Intent for these projects is expected to be published in the Federal Register?

**Response:** The BLM and the Department are working diligently to move these NOIs forward with the goal of publishing them in the Federal Register within the next two months.

**Question from Senator Martin Heinrich**

**Question:** Has the Bureau of Reclamation implemented water leasing programs in basins other than the Middle Rio Grande? What has been the experience of the Bureau in implementing water leasing in those basins? What have been the challenges, lessons learned, and successes of those water leasing programs?

**Response:** Reclamation has over 40 years of experience partnering with local water districts throughout the 17 western states to facilitate water transactions in order to enable greater flexibility in the use of water resources and Reclamation facilities to meet a broad array of water demands. Water leasing is a type of water transfer generally limited to a limited time period, as opposed to direct, permanent sale of water rights.<sup>1</sup> Reclamation plays a central role in water transfers when its facilities are used to store or convey non-project water, the proposed water transfer impacts Reclamation contractors, or Reclamation purchases water for the purpose of environmental flows or water for wildlife. The primary drivers for water transfers vary, but are generally associated with water supply shortages, the high cost or difficulty of developing new supplies, and the differences in value between alternative water uses.

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<sup>1</sup> The term "water leasing" is generally, but not exclusively, used in the context of Indian water rights settlements, while the term "water transfers" refers more broadly to the range of activities Reclamation participates in to assist moving water between willing buyers and sellers.



**U.S. Senate Committee on Energy and Natural Resources  
Subcommittee on Water & Power  
June 14, 2017 Hearing: Pending Legislation  
Questions for the Record Submitted to Mr. Scott Cameron**

Reclamation has had an integral role in water transactions, including facilitating transfers of water amongst its stakeholders utilizing federal facilities. A few examples of water transactions, including water leasing, include Reclamation's involvement in the allocation of water in California through the Central Valley Project and the Colorado River. In the first instance, the Central Valley Project and California State Water Project allow for water to move between locations and users, thus allowing for a robust market for water transfers, especially during dry years. In the case of the Colorado River, Reclamation participated in the development and implementation of the State Qualification Settlement Agreement, which quantified the share of California's apportionment of Colorado River water and allowed for transfers of Colorado River water among Colorado River users. In Colorado, between 2007 and 2015, about 140,000 acre-feet of water per year was transferred from Colorado-Big Thompson Project contract holders to other water users within the Northern Colorado Water Conservancy District. Native American water rights settlements enacted by Congress often authorize water leasing for settlement water, which can provide a stable revenue stream for a Tribe and a water source for communities near an Indian reservation.

The availability of water transfers is largely dependent on the unique circumstances of the Reclamation project, federal and state law, or local conditions. Because water markets are based on water sources derived from federal, state, or local water rights, and because such rights vary, the exact form and practice of water markets vary. Functioning water transfer markets require the existence of willing buyers and sellers, where there are sufficient economic incentives for water users to pursue water transfers. The absence of adequate water infrastructure to move water among water users can hinder the facilitation of water transfers. Reclamation's general deference to state law that govern the control, appropriation, use and distribution of Reclamation project water, complicates Reclamation's ability to develop a uniform water transfer process. Certain uses may not be considered beneficial under state law, such as instream flows, thus narrowing the types of water users that can participate in a water market. Legislation authorizing a Reclamation project specifies the project purposes and generally identifies the project's service areas, which can also narrow the scope of potential buyers. Water transfers can also have a variety of adverse economic, social and environmental impacts on third parties.

Reclamation has developed several recommendations to remove impediments to water transfers, which include identifying and evaluating opportunities for increased efficiencies relating to environmental compliance, creating a centralized source of information for water transfers, and reducing transaction costs by making information generated or compiled by Reclamation available, including information related to the approval process required, NEPA compliance, and potential fees or charges. Reclamation continues to pursue opportunities to facilitate water transfers as a valuable tool in managing the competing needs for water in the West.

**U.S. Senate Committee on Energy and Natural Resources**  
**Subcommittee on Water & Power**  
**June 14, 2017 Hearing: Pending Legislation**  
**Questions for the Record Submitted to Mr. Scott Cameron**  
**Questions from Senator Angus S. King, Jr.**

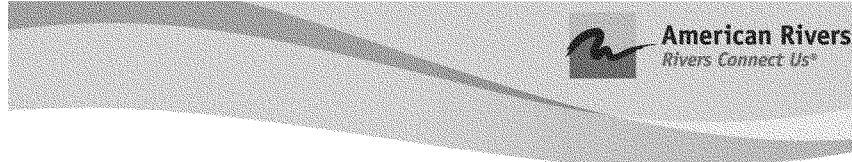
**Question 1:** I understand the intent of S. 677 is to help streamline permitting processes, but I also understand the bill is considered problematic by environmental groups, and concerns have been raised that the language may be duplicative to existing policy.

In testimony you submitted, you suggest that S. 677 establishes policy that already exist, but you also acknowledge the importance of streamlining and expediting permitting processes. What can the Bureau do administratively to address these challenges and address water challenges in a more sustainable manner? When can and will administrative actions be taken to address these challenges?

**Response:** As noted in our testimony, Reclamation supports efforts to streamline and expedite, in a manner consistent with law, environmental reviews and approvals for all infrastructure projects, including new surface water storage projects. Surface water storage projects create multiple benefits, including reliable water supplies, flood control, hydropower, and water quality improvements. The Department is looking into some of the factors that often curtail the authorization of new surface storage projects, such as often costly, unpredictable, and time-consuming environmental review processes; or identifying additional, non-federal cost-share partners to finance the repayment of new projects. We continue to look at ways to streamline and expedite the approval of infrastructure projects, and in doing so, aim to identify new and viable surface storage projects.

**Question 2:** Can you expand on what aspects of S. 677 are duplicative efforts of Title 41 of the FAST Act and offer specifics?

**Response:** Title XLI of the FAST Act established a process to expedite the federal approval of infrastructure projects that would likely require a total investment of more than \$200 million, including water resource projects. The Act creates a council composed of relevant permitting agencies to designate lead agencies for covered projects, develop recommended performance schedules, establish best practices, and shorten the time in which challenges can be made to final decisions. Similar to S. 677, the Act pertains to any license, permit, approval, finding, determination, or other administrative decision issued by an agency - including the Department of the Interior - that is required or authorized under federal law. Like Section 3(a) of S. 677, the Act creates a mechanism to identify a lead agency to work with project sponsors to expedite the approval process. The Act requires the lead agency to identify and notify cooperating agencies that have financing, environmental review, authorization, or other responsibilities with respect to the proposed project, as does Section 3(b) of S. 677. The Act also requires the lead agency to establish a permitting timetable for action by each participating agency on any federal environmental review or authorization required for the project, similar to Section 4(b)(3) of S. 677.



June 14, 2017

The Honorable Jeff Flake, Chairman  
 The Honorable Angus King, Jr., Ranking Member  
 U.S. Senate Committee on Energy and Natural Resources  
 Subcommittee on Water and Power  
 304 Dirksen Senate Office Building  
 Washington, D.C. 20510

Dear Chairman Flake and Ranking Member King,

On behalf of our more than 200,000 members, I am writing to express our positions on the bills before the Subcommittee today. We oppose S. 677, support S. 1012, and support in concept S. 1029 and S. 1030. We appreciate the hard work that has been put into these bills so far and look forward to working with the Senators and staff to improve them, as able, before they move to consideration by the full Committee. Our comments on the bills are provided below.

*S. 677, the Water Supply Permitting Coordination Act*

American Rivers understand that new surface storage projects are a consideration as part of a multi-faceted portfolio aimed at addressing long term drought in the Western United States. We also share Congress' view that long-term, balanced solutions to drought and water supply security that support and protect local economies, the viability of agriculture, municipal water supplies, recreation, and the riparian environment are critical to the future of Western communities. S. 677, however, fails to provide a long-term, balanced solution, and goes far beyond the scope of authorities vested in the Bureau of Reclamation (the "Bureau") while undermining the critical role other federal agencies, tribes, and states play in the permitting of water supply projects in the West. We remain concerned about the potential harmful impacts to management authorities designed to protect streams and conserve watersheds. In light of these concerns, we ask you to oppose S. 677.

This legislation **amends the Reclamation Act, 43 U.S.C 371, et seq., in a way that undermines the management authorities of other federal agencies, tribes, and states.** S. 677, allows the Bureau to preempt state laws and procedural requirements for agency decision-making by dictating unreasonable deadlines. It also weakens authorities under Endangered Species Act and Clean Water Act, as well as other federal laws, by subordinating all other State

and federal agencies to the Bureau's sense of how much time those administering agencies should have to do their jobs.

Specifically, S. 677:

**Designates the Bureau as the lead agency and allows the Bureau to set the schedule** for all federal authorizations, including those issued pursuant to the Clean Water Act (CWA), the Endangered Species Act (ESA), the Federal Land Policy and Management Act (FLPMA), the Coastal Zone Management Act (CZMA), the Wild and Scenic Rivers Act (WSRA), and other federal authorizations, even where those authorizations have been delegated or devolved to the states or Native American tribes.

**Forces all other federal, state, and tribal agencies to comply with the Bureau's schedule and to defer** to the Bureau's proposed scope of environmental review.

**Effectively waives the Endangered Species Act or the Clean Water Act if a state, tribe, or federal agency cannot meet the Bureau's schedule or misses a deadline.** The Bureau and the project applicant may simply proceed with the proposed action and the authorization is waived. There are no similar remedies or penalties if the Bureau or the project applicant fails to meet a deadline, or if delay caused by Bureau or the project applicant results in an agency missing a deadline. The end result of this and the following provisions could be that states and tribes may be forced to deny certification for new projects in order to avoid potential legal liability.

It is important that federal natural resource agencies retain the authority and responsibility to condition operations of surface storage projects so as to protect streams and other public resources. A key part of protecting watersheds, especially in the arid West, is maintaining healthy flows in streams. For years, American Rivers has worked with the federal land management agencies, tribes, states and other stakeholders to protect healthy river flows on public lands. Federal land managers, states, tribes and the public have an important role to play in protecting streams – based on the Property Clause of the Constitution, Section 505 of the Federal Land Policy and Management Act, and other authorities – and they also have a responsibility to work with their stakeholders to do it right. Provisions of S. 677 would harm the ability of federal land managers, states, and tribes to use these authorities to protect streams, rivers, and vital fisheries.

We oppose S. 677, and urge Congress to carefully consider the impacts of the legislation on federal, tribal, and state authority before proceeding further and determine if legislation is needed.

*S.1012, the New Mexico Drought Preparedness Act*

American Rivers supports S. 1012, the New Mexico Drought Preparedness Act. We share Congress' view that long-term, balanced solutions to drought and water supply security that support and protect local economies, the viability of agriculture, municipal water supplies, recreation, and the riparian environment are critical to the future of Western communities. Upgrading aging, century-old irrigation and water delivery infrastructure in the West is an opportunity to build flood and drought resilience through improved water storage and delivery and improved river health. Restoration of watershed function is a sound investment that pays dividends over the long-term. Linking a water infrastructure project with upstream or downstream investments in natural aquatic functioning increases the cost-effectiveness of the project and increases the range of project benefits. We ask that the Committee support S. 1012.

American Rivers' specific comments on sections of the bill are as follows:

• **Section 7, Emergency Funding**

American Rivers strongly supports making financial assistance available to 15 different kinds of projects that address drought impacts to water supplies and other water-related crises, or that help water suppliers engaged in collaborative processes to restore the environment, including at the basin level. Turning to unsustainable ground water pumping during drought exacerbates water scarcity, and ultimately worsens drought impacts over the long term. Some emergency drought relief funds have unfortunately promoted such counter-productive drought response measures in the past. American Rivers asks the Committee to support the following change to Section 7, to avoid paying for unsustainable groundwater pumping during drought:

- Delete the word *pumps* in subparagraph (1) of subsection 7(b), and
- Delete the phrase *and other areas* in subparagraph (2) of subsection 7(b).

In addition, to avoid having water saved through the important efficiency activities listed in Section 7(b) be used for purposes other than the environmental benefits for which they are intended, the Committee should add a subsection (c) barring such practice. One example of this kind of safety clause is in §9504 of the SECURE Water Act, 42 U.S.C. §10364(a)(3)(B), which directs the Secretary of the Interior not to:

provide a grant, or enter into an agreement, for an improvement to conserve irrigation water unless the eligible applicant agrees not –

- (i) to use any associated water savings to increase the total irrigated acreage of the eligible applicant; or
- (ii) to otherwise increase the consumptive use of water in the operation of the eligible applicant, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.

• **Section 8, SECURE Reauthorization**

American Rivers strongly supports reauthorization of the SECURE Water Act. Through its Basin Study and WaterSMART grant programs, this Act has been a critical component of the efforts to restore water supply and demand balance in the Colorado River Basin and elsewhere in the West.

• **Section 9, Emergency Drought Relief Act Reauthorization**

American Rivers strongly supports reauthorization of Reclamation's Emergency Drought Relief Authority funding. With less than \$12 million left under the current appropriation, American Rivers urges the Committee also to raise the cap on appropriations from \$90 to \$110 million.

In addition, American Rivers encourages the Committee to amend the Act to reauthorize Reclamation's authorities in Title 1, by extending to the year 2022 the date in 40 U.S.C. §2214(c). Title 1 allows Reclamation to purchase water, make its project water available, lease water or make funding available to lease water, and to participate in state water banks on a temporary basis during drought, including specifically for protecting or restoring fish and wildlife resources. This authority has proved critical around the West in maintaining endangered species populations during drought.

• **Sec. 11. Regional Conservation Partnership Program**

American Rivers strongly supports the Natural Resources Conservation Service's Regional Conservation Partnership Program (RCPP), created in the 2012 Farm Bill. Public/ Private partnerships created by the RCPP have proven to be an important tool to fund "water quantity conservation, restoration, or enhancement projects relating to surface water and groundwater resources, including the conversion of irrigated cropland to the production of less water-intensive agricultural commodities or dryland farming; or irrigation system improvement and irrigation efficiency enhancement..." as well as drought mitigation, water retention, and habitat conservation, restoration & enhancement.

• **Sec. 12. Conservation Reserve Program**

The Conservation Reserve Program (CRP), 16 U.S.C. §3831, has proven both important and useful in preserving our nation's agricultural lands. CRP ensures an "equitable balance" among the conservation purposes of soil erosion, water quality, and wildlife habitat. 16 U.S.C. §3831(i). Within CRP, there is the Conservation Reserve Enhancement Program (CREP), through which the Farm Service Agency (FSA) partners with States who determine which of their owners may be compensated for removing environmentally sensitive lands from production. American Rivers supports both CRP and CREP. Section 12(a) of S. 1012 would expand CRP conservation priority

areas, designated because of “special environmental sensitivities,” 16 U.S.C. §3831(f)(1), to include areas whose water quantity is adversely affected as a result of agricultural activities.

*S. 1029, to amend the Public Utility Regulatory Policies Act of 1978 to exempt certain small hydroelectric power projects that are applying for relicensing under the Federal Power Act from the licensing requirements of that Act and S. 1030, a bill to require the Federal Energy Regulatory Commission to Congress a report on certain hydropower projects.*

American Rivers support in concept S. 1029, a bill to amend the Public Utility Regulatory Policies Act of 1978 (PURPA) to exempt certain small hydroelectric power projects that are applying for relicensing under the Federal Power Act from the licensing requirements of that Act, and S. 1030, a bill to require the Federal Energy Regulatory Commission to submit to Congress a report on certain hydropower projects. The direction of S. 1029 is significantly improved over Senator King’s previous bill (S. 1338 in the 114<sup>th</sup> Congress), and we appreciate the time and effort devoted to more narrowly tailoring the legislation to expedite licensing while preserving critical environmental oversight.

It is a commonly held misconception that small dams have small impacts. Depending upon the siting of a hydropower project, its impacts can be felt throughout the river system. A poorly sited dam, regardless of its size, can injure property rights, jeopardize enforcement of trust and treaty obligations, and decimate fisheries. The steep decline in (and now absence of) wild salmon in New England is a prime example of the negative impacts of bad siting and deficient fish passage. Modern improvements in fishways and watershed management have greatly increased the number of American eel, herring, alewife, and other foundational fish populations present in America’s rivers coastal waters. Such recovery, however, would not be possible without sufficient review of licenses by the National Marine Fisheries Service, the states, and other necessary parties currently engaged in hydroelectric licensing.

American Rivers supports the responsible development and operation of low-impact hydropower projects. We also believe that infrequent licensees need special attention and flexibility in the application review process. The landscape of hydroelectricity is different in the East than in the West. Particularly, New England rivers lack the force and size of many of the rivers hosting hydroelectric projects along the Pacific coast, which has promoted the development of more, smaller dams. Viewing these projects in isolation is unlikely to restore damaged fisheries that provide Americans with essential subsistence, recreational, commercial value. The federal regulatory process for hydroelectricity is collaborative and ensures that the public’s interests are represented for both power and non-power impacts of hydroelectric projects.

While S. 1029 is a strong improvement over previous legislation regarding smaller capacity hydroelectric projects, American Rivers has concerns regarding exempting projects from federal oversight while not expressly empowering states to oversee them. Furthermore, enabling FERC

to declare itself no longer responsible for dam safety on certain projects without providing the states sufficient funding to take over its responsibilities could further overburden inspectors. There are also issues of cybersecurity that arise when FERC is no longer overseeing operations at a project that is connected to the national grid; as states do not regulate hydroelectric dams, they lack the technical sophistication, engagement, and expertise in cybersecurity that the federal government possesses.

Regarding S. 1030, we believe that there is significant untapped potential for increased hydropower generation at existing facilities through technology and efficiency upgrades. New hydropower generation on existing water infrastructure is a vastly underserved market; we have encouraged laws and policies promoting such development and are committed to further working on responsibly cultivating this potential. The information this bill requests from FERC may lend itself to the development of non-powered structures assisting in the powering of structures farther downstream. Not every dam is suitable for development as an energy producer, however, and more information about the uses and costs at a given structure could help inform whether development at a similar structure would be either profitable or environmentally advisable.

Due to the collaborative process outlined in the Federal Power Act, and the need to balance power generation with responsible resource management, outdoor recreation, and water quality required by the Electricity Consumers Protection Act, hydroelectric projects do more than simply produce low-carbon energy. The measurable benefits to (just to name a few) fisheries, forestry management, quality of drinking water, protection of cultural and historical sites mentioned in S. 1030 would not be possible in an oversight regime that was limited exclusively to the Federal Energy Regulatory Commission (FERC). Allowing the American people to see more clearly how hydroelectric licensing protects public interests in addition to putting power in the grid could promote the responsible hydroelectric development and operation long championed by American Rivers. To that end, it might be beneficial to the study and its use in hydropower development if it included an accounting from FERC not simply on costs to licensees, but benefits to the public from healthy fisheries, clean water, and the outdoor recreation economy.

We thank Senator King for his continuing effort to promote responsible hydroelectric development serving the multiple interests of the American people. American Rivers commits to work collaboratively with him on S. 1030 and with him and Senator Flake on S. 1029 to the greatest extent we are able. Improving efficiency, allowing for a manageable process that does not sacrifice the environment, ensuring proper management of shared natural resources, and the promotion of outdoor recreational safety are top priorities of our members and organization.

Safeguarding our natural resources and promoting responsible policies and resource development is a critical concern of American Rivers. American Rivers is grateful for the hard work of these



bills' sponsors and looks forward to continuing to work with them and their staffs to improve them further, as able.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Bradley". The signature is fluid and cursive, with the first name "Jim" being more prominent than the last name "Bradley".

Jim Bradley  
Vice President for Policy and Government Relations



**Randall Davey Audubon Center**  
P.O. Box 9314  
Santa Fe, NM 87504-9314  
Tel: 505-983-4609  
Fax: 505-983-2355

May 10, 2017

Senator Tom Udall  
531 Hart Senate Office Building  
Washington, D.C. 20510

Senator Martin Heinrich  
303 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Udall and Senator Heinrich:

The National Audubon Society writes to express our support for the New Mexico Drought Preparedness Act of 2017 (S. 1012), because we believe it will strengthen New Mexico's water security and resiliency in the face of drought.

After witnessing the impacts of more than a decade-long drought, westerners are acutely aware of the aridity of the American West. While we recognize that water scarcity is felt with the greatest urgency at the local level, the connectivity of water requires solutions that work at a basin scale and balance the needs of cities, farms, and nature. Although states have the primary authority to manage water resources, the federal government has a significant role to play in advancing innovative, collaborative, and widely-supported water conservation measures and creative-financing to meet water demands and protect and restore healthy river flows.

The New Mexico Drought Preparedness Act of 2017 accomplishes this by providing vital funding and program authorizations that enable urban, agricultural, and ecosystem sectors to thrive in a shared water system. Key provisions of the legislation include:

- Section 3, which establishes a voluntary water acquisition program across New Mexico to be managed by the Bureau of Reclamation, in coordination with other federal agencies, the state, and water districts. The program aims to benefit fish and wildlife, water quality, and river ecosystem restoration, along with the stewardship and conservation of working lands, water, and watersheds. Incentives and cost-shares are available to water districts and producers to improve irrigation systems and efficiency and to establish water leasing programs. Voluntary water leasing is a collaborative, flexible solution for achieving substantial benefits during times of drought and generating a financial return for farmers while preserving agricultural water rights and rural economies in perpetuity.

- Section 8, which reauthorizes SECURE and strengthens WaterSMART to plan for drought impacts. The bill expands the scope of grants to include planning for the impacts of drought. It also provides discretionary authority for the Commissioner to waive cost-share requirements for emergency drought situations and allows for prioritizing projects with multiple benefits, or those that include innovative tools, such as water conservation and markets.
- Section 9, which reauthorizes the Reclamation States Emergency Drought Relief Act, provides the Bureau of Reclamation authority to fund temporary water transfers, water banking, and other structural and non-structural measures to stabilize river flows and improve the efficiency and reliability of water supplies. The Reclamation States Emergency Drought Relief Act also provides a broad array of drought relief to states, tribes, and water districts. At the request of states or tribes, the Drought Relief Act authorizes the Bureau of Reclamation to help prepare and implement drought contingency plans, designed to prevent or mitigate the adverse effects of drought. These plans can draw on innovative and flexible mechanisms such as water banks, water conservation, use of Reclamation's project facilities to store and convey non-project water, and water supplies for fish and wildlife. S. 1012 would extend authorization through 2022 and more than doubles the amount of funding that can be appropriated from \$90 to \$190 million.

The bill also authorizes additional programs and studies focused on improving flexibility, efficiency, and optimization of water supply, storage, and delivery through reservoir management and reoperation in the Upper Rio Grande Basin. In consultation with water users and tribes, reservoirs constructed and authorized 50 to 100 years ago would be fully reviewed to meet current needs, including environmental purposes, and future conditions. Modernizing water management would benefit all water users by enhancing water productivity, conservation, and drought resiliency while reducing conflict over water for ESA-listed species.

We also request consideration of some modest changes to the bill including:

- Insert a new subsection 3(c) as follows: To assist in developing and administering the program, the Secretary may provide funds to a federally established nonprofit entity with particular expertise in western water transactions including funding to develop a comprehensive strategic plan and budget to help inform the long-term goals and activities of the program; and award grants for associated program research, implementation and evaluation.
- Insert a new subsection 3(e) as follows: The Secretary can enter into one or more interagency agreements with the Secretary of State, Secretary of Army and Secretary of Agriculture to direct participation and transfer of funds to design, implement, and evaluate water acquisition programs for the U.S. International Boundary and Water Commission, U.S. Army Corps of Engineers and Natural Resource Conservation Services and/or Farm Service Agency.
- In subsection 7(b):
  - o Strike "pumps," in paragraph (1);
  - o Strike "and other areas" in paragraph (2); and

o Insert a new subsection (c) as follows: Assistance may not be used to expand irrigated acreage.

S.1012 focuses on sustainable solutions that optimize supply and benefits for cities, agriculture and nature across multiple scales from districts to river basins. For these reasons, we support S.1012.

Thank you for your leadership in addressing drought in New Mexico and throughout the Western United States.

Sincerely,

A handwritten signature in cursive script, appearing to read "Beth Bardwell".

Beth Bardwell  
Director of Conservation  
Audubon New Mexico

**Written Testimony of Jerry Meissner, Chairman  
Dry-Redwater Regional Water Authority  
U.S. Senate Energy and Natural Resources Subcommittee on  
Water and Power Hearing  
May 10, 2017**

I appreciate the opportunity to submit the Dry-Redwater Regional Water Authority's support for S. 685, the Clean Water for Rural Communities Act, which will authorize our Dry-Redwater Regional Water Authority System.

The Dry-Redwater Regional Water Authority System – also called DRWA – is a rural water project in Eastern Montana with a current service area of approximately 11,000 square miles covering the Montana counties of McCone, Richland, Dawson, Prairie and Garfield. In addition, our Water System will service McKenzie County, North Dakota, which sits atop the Bakken Shale play, and is North Dakota's leading oil-producing county. This Bakken boom has brought a population increase both to North Dakota and to our Eastern Montana communities, increasing the stress on our drinking water situation.

This part of Eastern Montana does not, historically, have good water quality. Simply stated, the water is unsafe to drink. Therefore, in 2002 a steering committee of volunteers was formed to bring safe and clean drinking water to our citizens – and the Dry-Redwater Regional Water Authority became a legal entity in 2005.

Initially, the Water System was planned to serve 15,000 residents, but with the 2016 inclusion of additional towns, Sidney and Glendive, **it can now bring clean drinking water to almost 30,000 people** in eastern Montana.

**We turn to you, the United States Congress, for federal authorization of this project, as the United States Bureau of Reclamation has halted all work on our project after 11 years of collaboration to build this Water System.** To quote the September 2016 Concluding Report sent to us by the Bureau of Reclamation:

*Should the sponsors [DRWA] want to continue the study at some future date, they would first have to obtain specific legislative feasibility study authority to conduct the study since the Rural Water Program authority is ending at the end of Fiscal Year 2016.*

The majority of the proposed communities to be served are currently operating their own municipal water systems. All of the communities are using wells as a source of water, but these wells are not providing the quality or quantity of water needed. These small rural towns cannot afford to build, operate, maintain, and replace their own water treatment facilities and face limited availability of water sources. Therefore we

strive to construct a regional rural water system that will allow these small communities to work together to provide access to a reliable, safe, and high quality water supply. DRWA uses a regional approach to improve service, reduce environmental impacts and capture financial benefits while reducing costly duplication of services. This regional system will provide a supply-managed water service to customers in a fiscally responsible manner.

Allow me to provide some examples of the problems Eastern Montanans currently face. The public water supply systems within our boundaries presently are unable to meet the requirements of the Safe Drinking Water Act without expensive energy intensive treatment options. According to the Montana Department of Environmental Quality (DEQ), one of our public water supply systems is out of compliance with the Federal Clean Water Act due to levels of secondary contaminants – sodium and total dissolved solids. Many of the existing systems treat their water with chlorine, which in turn has caused problems with elevated levels of disinfection by-products. Other systems have problems with bacterial contamination and elevated levels of total dissolved solids, iron, manganese, lead, copper, sulfate and sodium that render the water undrinkable.

Three communities must treat their water because of high levels of fluoride, which is a health hazard and a regulated contaminant. Jordan does not treat its water but it is high in sodium and total dissolved solids, which are not currently regulated, but have detrimental effects on those drinking it. Fairview has high organic levels in its water that has led to a disinfection by-product violation and the Town operates an iron and manganese removal water treatment facility that uses chlorine as the oxidizer; which, while effective at removing the iron and manganese, does have the problem of forming disinfection by-products.

One well serves the students and faculty of the Garfield County School District No. 15. This well shows excess sodium and fluoride levels. And, the total dissolved solids are more than twice the recommended level. This well and the other private wells are not regulated by National Drinking Water Standards but the detrimental effects of the water on their users are not any less because they are not regulated.

The rural residents in the project area currently obtain their water, in the majority of instances, from private wells. Most rural residents haul all of their drinking and cooking water used, either because their well water is undrinkable or there is not a sufficient quantity to be usable. The treatment of water in a private well is very costly and sometimes complicated depending on what is in the water. Based upon preliminary review of the water quality in the wells of rural users we know the majority of them do not have access to the quality of water needed for a healthy existence. Attached is a spreadsheet documenting the quality of water samples from various wells within our service area.

**A regional rural water system will allow the small communities to come together and provide citizens with access to a reliable, safe, high quality water supply.** From a regulatory aspect a regional water system has significant benefits. At the present time, there are six different regulated public water systems within the region that are meeting regulatory requirements of the Safe Drinking Water Act. When a rule changes, all systems must react to the change, individually. That means that the Montana Department of Environmental Quality is perennially facing problems with compliance issues in these smaller public water systems as they have a reduced capacity to maintain and operate due to their size. A regional water system would provide one point of regulation for all of the member systems. If a rule were changed, it would only affect one treatment plant and, due to economies of scale, a regional system can be upgraded and operated at a higher level of oversight and management at a smaller per user cost than smaller individual municipal water supply systems. An increased degree of compliance can be expected from a regional water system, which further assures the water users of a safe and reliable source of water.

The water for this project will be obtained from the Dry Arm of Fort Peck Reservoir near Rock Creek. Just under 4,000 acre feet of the 18 million acre feet has been granted to DRWA via MT Water Right 40E 30064997. The in-take and conventional surface water treatment facility will be located at North Rock Creek on the Dry Arm of Fort Peck, in McCone County.

Currently, over 11,000 users have completed applications for service and have paid 'good intention' fees to show their financial commitment. The State of Montana has invested over \$1,130,000 into studies and organizational efforts to date. In addition, DRWA has matched more than \$450,000, and the Bureau of Reclamation has contributed \$120,500. **Total investments into DRWA to date exceed \$4 million, including the funding provided by Richland County to help build DRWA's currently active Sidney South pipeline.**

The project as conceptualized will consist of over 1,220 miles of pipeline, 38 pump stations, and 20 major water storage reservoirs. The 2012 Feasibility Report projected a total project cost of \$233,201,300, but as it is 2017 we must add for inflation. The DRWA is pursuing federal funding of 75% of the project cost with the remaining 25% of funds pursued in the form of a low interest loan from the Rural Utility Service (12.5%) and a grant from the Coal Tax Trust Funds (12.5%) administered through the Montana Department of Natural Resources and Conservation.

**It is very important to note that the two federally authorized regional water systems already under construction in Montana stipulate that the federal government fund more than 75% of the project costs.**

- The Fort Peck Dry Prairie Regional Water System was authorized in November, 2000 by Public Law 106-382. The **on-Reservation portion costs are paid 100% by the Federal government**, and the off-Reservation portion has a **76% Federal** –24% combined State/Dry Prairie split.
- The Rocky Boy's/North Central Montana Regional Water System was authorized under Public Law 107-331, 116 Stat. 2859 on December 12, 2002. This law provides for the federal government to pay **100% of the capital costs of the tribal share** of the project, and **80% of the non-tribal capital costs**, which includes the incremental increase to the cost of the Core system necessitated by the increased capacity required to serve the members of the Regional Water Authority.

Certainly the residents that need safe, clean drinking water in Eastern Montana are as important as the residents in other parts of the state where the federal government is greatly assisting to build Water Systems.

The Dry-Redwater Regional Water System is also financially feasible in comparison to rural water system costs in our three state region of Montana, South Dakota and North Dakota. The completed feasibility study includes preliminary engineering analysis of the system and the DRWA has also completed some preliminary cultural and environmental reviews. There are no fatal flaws found in these preliminary studies that included contacts with State, Federal and Local officials on NEPA compliance.

There are distinct benefits of a regional water system in our area:

- Communities will not absorb the costs of upgrading numerous smaller water facilities to keep up with water quality standards.
- A greater number of regional system users helps defray the cost of good water for every individual in the area.
- This system will provide jobs, not only during construction, but also for ongoing operation and maintenance.
- Economic and community development opportunities with the ability to attract businesses and people that need a reliable water source are greatly enhanced.
- Total water and energy consumption by all communities will be substantially less than if each community provides water treatment.
- A dependable, high-quality drinking water sources provides an incentive for business and industry to consider relocation to eastern Montana.



- Reduction in chemical usage and cost as a result of increased crop spraying efficiency.
- Rural area fire protection capacity
- Increased property values
- An alternative water source for livestock.
- Safe and reliable household drinking water to improve the health and existence of the people.

The Dry-Redwater Regional Water Authority has been working with the Billings office of the Bureau of Reclamation to instill this water project as stipulated in the Rural Water Supply Act of 2006, and as expressed in the Interim Final Rules. However, the staff turnover within this regional office along with the various interpretations of the Interim Final Rules given by this office has significantly strung out this project's approval. Given the investment made in time and money – over \$4 Million dollars has been spent thus far (see attached timeline) and over 11 years of work – we respectfully request the Committee to favorably report this bill and Congress to pass it into law so that the Dry-Redwater Regional Water System will be federally authorized. As it stands now, the Bureau of Reclamation has halted communications and work with the DRWA, and issued a Concluding Report because, it says, it has no authorization to continue working with DRWA due to the sunseting of the Rural Water Supply Act.

However, the two authorized water projects in Montana (Rocky Boys/North Central and Ft. Peck/Dry Prairie) obtained federal authorization **before the Rural Water Supply Act was put in place** and **the DRWA certainly worked with the Bureau of Reclamation before the introduction of the Rural Water Supply Act**. Further, **not one project (from any state) was authorized by Reclamation during the entirety of the Rural Water Supply Act**. DRWA is quite surprised with Reclamation's decision to halt 11 years of work just because an Act has sunset.

**Monies Spent**

Both the Bureau of Reclamation and the State of Montana have allocated valuable time and resources to this Water System since 2004. Almost \$4 million has been allocated (\$3,668,266.06) as of August 31, 2016 and over \$4 million will be spent within the next Montana biennium (\$4,834,366.06). **It is important that these funds be included in the steps going forward to authorization and we implore the Committee to include these monies in their Report to accompany this legislation.**

Total Montana State Funding through 8/31/2016: \$1,090,678.25

- Planning Grant: \$22,500.00
- Technical Services Grant: \$20,000.00
- Planning/Services Grant: \$10,000.00
- Planning Grant: \$21,800.00
- Planning Grant: \$48,878.25
- CDBG Grant: \$1,500.00
- Administrative/Planning Grant: \$966,000.00

Total Federal Funding through 8/31/2016: \$120,500.00

Total Richland County Funding through 8/31/2016: \$1,637,060.37

- \$1,492,184.73 in Capital Contributions
- \$144,875.64 in Grant Funding

Total DRWA Contributions/Miscellaneous Donations through 8/31/2016:  
\$820,027.44

**TOTAL AS OF 8/31/16: \$3,668,266.06**

Funding contracted from other entities for upcoming biennium: \$1,166,100.00

- DNRC Grant Funding (East Yellowstone): \$759,100.00
- MDU Contribution (East Yellowstone): \$100,000.00
- Richland County (East Yellowstone): \$52,000.00
- SRF Loan Funding (East Yellowstone): \$75,000.00
- Administrative/Planning Grant: \$180,000.00

**GRAND TOTAL (Current + Upcoming Biennium): \$4,834,366.06**

The DRWA has been working with the Bureau of Reclamation for 11+ years with no authorization recommendation. We are hopeful the Trump Administration and Secretary Zinke can introduce common sense into the approval system of the BOR.

We understand the budget constraints the Bureau of Reclamation faces. However, Reclamation entered into numerous agreements with DRWA over the last 11 years to put together this Water System. Even if Reclamation does not have current funds to pay for this Water System, federal authorization is NECESSARY for the State of Montana to recognize this Water System and begin construction.

Until amendments enacted by the 2015 State Legislature, the State of Montana was only allowed to expend Construction Grant Funding for Federally Authorized regional water projects. While the law has changed, the stigma of expectation for Federal Authorization has not been eliminated. In terms of Bond Counsel, Montana DEQ, and other such agencies, the legitimacy of the DRWA project is not realized until Federal Authorization is obtained. In a nutshell, DRWA is not eligible for the same funding opportunities and expansion as the two authorized Montana rural water projects have been.

In summary, the Dry-Redwater Regional Water System will provide a safe and dependable municipal and rural water supply for the public water supply systems and rural users that comprise the Dry-Redwater Regional Water Authority. Many positive long-term economic impacts will be realized by the agricultural, energy, tourism and recreational industries of the area; while the potential for good quality and quantity of water will allow businesses and housing to build and develop. Our primarily agricultural-based frontier communities in eastern Montana strongly support all components of this project. Certainly the residents of Eastern Montana deserve a safe, clean, reliable source of water that is vital to our existence.

Water Quality of a Small Sampling of Wells Currently Used in the Service Area

Well Site Name	County	Depth	Sodium	Bicarbonate	Sulfate	Fluoride	TDS
73 RANCH	Garfield	1003.00	1524.00	737.00	2464.00	2.80	4577.17
JORDON JOHN	Garfield	280.00	667.00	795.00	793.00	1.00	1885.00
CLAUSON WILLIAM	Garfield	300.00	502.00	812.00	391.00	1.00	1330.18
73 RANCH	Garfield	1003.00	1484.00	656.40	2346.00	<5.0	4362.31
GARFIELD CO SCHOOL DIST #15	Garfield	350.00	447.00	912.60	33.80	3.35	1048.79
BIG DRY SCHOOL HOUSE	Garfield	700.00	625.00	378.20	916.00	<0.5	1788.81
MCKERLICK JOHN	Garfield	80.00	586.00	700.20	627.80	2.00	1603.38
BURGESS RANCH	Garfield	365.00	670.00	271.00	681.00	1.00	1806.43
BAKER JIM	Garfield	390.00	979.00	1052.00	1241.00	1.00	2780.48
HOVERSON SARAH	Garfield	370.00	1062.00	1247.00	1210.00	1.50	2996.94
HAFLA JOE	Garfield	258.00	544.00	886.00	657.00	0.10	1733.50
PLUHAR PHILLIP	Garfield	255.00	460.00	688.00	424.00	0.30	1259.24
KEEBLER DEAN	Garfield	600.00	592.00	618.00	748.00	1.40	1671.91
LANDERS H	Garfield	380.00	587.00	612.00	764.00	1.10	1688.92
CITY OF CIRCLE	McCone	1624.00	412.00	907.70	<25.0	4.31	1002.02
CITY OF CIRCLE-WELL #1	McCone	150.00	775.00	829.60	1059.00	2.55	2317.44
CITY OF CIRCLE	McCone	1508.00	400.00	921.00	<0.1	5.20	1004.81
CITY OF CIRCLE	McCone	1508.00	472.20	886.90	<2.5	5.10	1109.19
PRAIRIE ELK SCHOOL	McCone	200.00	1891.00	2596.00	2055.00	0.95	5303.20
DREYER RAY	McCone	189.00	820.00	824.20	1229.00	0.80	2537.42
WHITMUS FRANK	McCone	101.00	975.00	1110.00	1350.00	1.18	2964.94
WHITMUS FRANK	McCone	640.00	476.00	1085.00	3.40	5.50	1129.85
WHITMUS FRANK	McCone	640.00	473.00	1088.20	<25.0	5.96	1123.78
WHITMUS FRANK	McCone	640.00	456.00	1003.50	<2.5	6.67	1101.34
WHITMUS FRANK	McCone	101.00	426.00	1043.10	7.40	0.06	1049.21
WALLER G	McCone	240.00	520.00	1000.40	837.70	0.10	2044.70
MERRY HERSCHEL	McCone	260.00	700.00	683.20	887.80	2.70	1967.40
KJELGAARD HAROLD	McCone	220.00	1340.00	1964.00	1345.00	1.90	3701.16
FLATTEN CLINTON	McCone	175.00	736.00	1160.00	660.00	4.07	2033.71
WAGNER R	McCone	85.00	92.00	494.80	667.20	0.10	1405.10
ZAHN DONALD	McCone	20.20	230.00	378.60	1705.70	0.20	2630.97
ZAHN DONALD	McCone	49.90	532.50	784.70	2125.80	0.20	3604.34
UNKNOWN-19.4 MI SW WELDON	McCone	?	2300.00	295.00	3700.00	NR	8128.32
PAWLOWSKI W	McCone	37.40	193.00	448.40	522.20	0.40	1107.56
SEXTON WALLACE	McCone	75.00	1015.00	493.00	4830.00	1.12	7144.25
MUELLER ARNOLD	McCone	203.00	626.00	1251.00	205.00	5.20	1527.93
UNKNOWN-10 MI S PRAIRIE ELK	McCone	?	4400.00	488.00	5000.00	NR	13717.39
FILLWORTH R CIRCLE MT 20 MI	McCone	201.00	1127.50	1018.90	2016.60	0.60	3844.26
TWITCHELL JOHN	McCone	89.00	810.00	867.60	1319.50	NR	2675.14
DREYER RAY	McCone	17.00	1116.00	915.00	3171.90	0.50	5320.63

PAINE EDWARD	McCone	123.00	1230.00	1283.90	1659.50	1.00	3591.35
HUSEBY D	McCone	20.00	445.00	878.40	673.00	0.30	1701.37
PAWLOWSKI OTTO	McCone	276.00	574.00	932.50	1014.90	NR	2237.45
JAMES MATTHEW	McCone	109.00	584.00	1191.20	344.00	1.00	1562.91
SHEFFELBINE ORVILLE	McCone	307.00	977.00	982.00	1511.00	0.20	3188.91
SHEFFELBINE ORVILLE	McCone	67.00	897.00	791.00	1528.00	0.55	2962.21
GASS MILTON	McCone	268.00	1470.00	1713.00	1794.00	0.70	4178.61
WRIGHT STEWART	McCone	365.00	954.00	1315.00	947.00	2.20	2619.10
GIBBS DAVID	McCone	210.00	825.00	819.80	1068.20	2.30	2349.54
HERZBERG JOHN	McCone	215.00	776.00	1290.00	624.00	1.10	2067.03
NEFZGER DEAN	McCone	175.00	1083.00	1576.00	1245.00	2.00	3150.22
GULDBERG	McCone	65.00	234.00	684.00	1610.00	2.10	2813.50

Meets Standards

Exceeds Standards

Source: Ground Water Information Center

**Timeline for DRWA's Interactions with the Bureau of Reclamation**

- June 2006 – DRWA Submitted Feasibility Study to BOR, in accordance with Procedural Requirements at the time.
- September 2007 – Letter from Lenny Duberstein-DRWA will need to meet new Act criteria, but BOR is still developing Act criteria
- November 2008 – Email from Thomas Brown-Interim Final Rule published
- November 2008 – Email/Attachment from Stephanie Hellekson-Interim Final Rule
- December 2008 – Email from Stephanie Hellekson with link to Economic & Environmental principals and guidelines for complying with Rural Water Act
- December 2008 – Email/Attachment from Brian Milne – Comments on Interim Final Rule
- May 2009 – MECA Support Letter
- May 2009 – Email from Stephanie Hellekson-BOR still developing Final D&S, Feasibility Study we submitted needs to include NEPA baseline study, request DRWA submit Appraisal Study
- May 2009 – DRWA informed that \$100,000.00+ spent on Feasibility Study was for nothing and would have to be done again, received expectations for Appraisal Study
- December 2009 – Email from Tod to Stephanie Hellekson informing of Senate Bill S637 and House Bill HR4119, wondering if BOR had any questions on DRWA process thus far
- December 2009-Email from Brian Milne with timeline of key communications on the authorization process with BOR that was requested during 12/14/09 conference call.
  - \*11/24/08-Email from BOR attaching Federal Register explaining interim final rules and public meeting to be held 12/1/08
  - \*12/5/08-Email from DRWA to BOR on how public meeting went with BOR response that meeting went well and will call to discuss
  - \*1/16/09-Submitted comments to BOR on Rural Water Supply Act rules
  - \*2/6/09-Submitted existing Feasibility Study/Addendum to BOR for review on compatibility with proposed guidelines
  - \*4/9/09-Draft Rural Water Supply Act guidelines sent by BOR with note they were very preliminary
  - \*5/5/09-Email from Tod to BOR on items of clarification

- \*5/14/09-Email from BOR suggesting NEPA baseline study for entire project area could be our next step, BOR would give some guidance and prepare to submit our appraisal study to BOR for review under the Act
- \*7/23/09-DC Trip-Meeting with BOR-No Rules in place yet for Rural Water Supply Act so modification of existing report should be put on hold
- \*9/7/09-Letter from Baucus to Mike Connor/BOR requesting comprehensive list of issues with DRWA
- \*10/15/09-Completed and submitted Environmental Scoping Report to BOR in accordance with previously funded Rural Water Projects
- \*11/6/09-Email from BOR acknowledging receipt of Environmental Report and notice they are working on next step and the status of the Rural Water Act Implementation
- \*11/9/09-Received letter from Mike Connor/BOR Commissioner (dated 10/30/09) to Baucus outlining 3 general areas of concern, same as in July testimony
- \*12/14/09-Conference call with Baucus/Tester Staff and Energy and Water Staff
- \*12/14/09-Received email from BOR requesting a meeting

-January 2010-Email from Stephanie Hellekson-need for meeting re:availability of existing documentation for completed studies (i.e. Feasibility, Environmental, Cost Estimates, etc....)

-February 2010-Document from Brian Milne to Stephanie Hellekson: DRWA Feasibility Report, Report Addendum & Appendix Data Restatement MOU

-February 2010-Email from Tod to Catherine (Baucus): BOR verbally acknowledges DRWA has done all steps that every rural water project has completed prior to being Federally Authorized

-February 2010-Email from Tod to Baucus: Changes asked of us by BOR, BOR states DRWA will have to wait for finalization of Rural Water Act rules before we can move forward AND DRWA will then go into a pool of projects and must compete with them. BOR also stated Greater Northwest Region has some projects and the other area of the US do not so it may be harder for DRWA to compete with other projects because they are in other regions of BOR and they want to spread the projects around. DRWA has funds and has gone through same process that all other rural water systems have prior to new Rural Water Act and are ready to move forward with final design and construction. With Federal authorization DRWA could start construction with our own and State of MT money within 8-12 months.

-March 2010-Email from Todd to Brian Milne: Projects in ND and MT have gotten federal authorization with the same level of PER/Feasibility that DRWA completed in 2007.

-March 2010-Email from Tod to Catherine (Baucus): Meeting with BOR Economics from Denver scheduled. Again, another new piece that is part of the new process. This was not part of information completed by any other water projects that obtained authorization prior to new Rural Water Act. New and DRWA didn't know about it when completed Feasibility/PER reports back in 2007. Local (Billings) BOR couldn't not even explain what they wanted for this portion of the report, thus the meeting with BOR/Denver. DRWA was ready in 2007/2008 to move forward, still ready but need authorization to take the next step. BOR process is just delaying a good project that is ready and funds to move forward.

-March 2010-Email from Brian Milne: Sample documents from regional water system completed in 1994 (Dickey Rural Water), sample documents from current rural water project (North Central Water Consortium) and history page from Dry Prairie showing final engineering report includes economic analysis was done AFTER authorization. Model used to determine feasibility of DRWA has been utilized since early 80's, process is getting problematic-BOR is process oriented and DRWA is results based. If DRWA can get Federal Authorization, BOR will still have opportunity to provide input in the process before appropriations.

-April 2010-Memo from Brian Milne regarding BOR meeting review of Appraisal Investigation Report/Economic Feasibility Analysis: Steve provided Technical Memorandum Number EC-2009-2-Evaluating Economic and Financial Feasibility of Municipal and Industrial Water Projects-December 2009, discussed level of detail needed for Appraisal Level Study. Outlined 5 methods available to determine benefits of a system. Technical memorandum outlines methodology available to completed NED Analysis required in the Feasibility phase. Process outlined in the Rural Water Act is:

- \*Sponsor or BOR prepare Appraisal Investigation
  - \*BOR prepares Appraisal Investigation Report
  - \*BOR determines Cost Share Feasibility Study report/NEPA Document is authorized
  - \*Feasibility Study Completed/Submitted to BOR
  - \*Project Authorization/Project Appropriation phase
  - \*Construction starts
- Process DRWA has followed is (same process Dry Prairie followed:
- \*Prepare Feasibility Study
  - \*Submit to Congressional Staff to be Bill prepared to become Federally Authorized
  - \*After Authorization, then Final Engineering Report/NEPA requirements/Water Conservation Plan with oversight and VE by BOR.
  - \*Project Appropriations
  - \*Construction Starts



-April 2010-Email from Tod to Catherine (Baucus): Feasibility Study completed in 2006 and updated with more users in 2007 does meet what BOR wants and was completed 3-4 years previous. Level of detail outlined at meeting for Economic Analysis has been exceeded by information collected in original report/addendum.

-June 2010-Letter from US Dept. of Interior/Stephanie Bartlett: DRWA eligible for further consideration for aware of agreement to conduct appraisal investigation – invite DRWA to submit full proposal for appraisal investigation

-June 2010-Email from Lenny Duberstein to DRWA: Draft Appraisal Report

-June 2010-Letter from DRWA to Lenny Duberstein per Lenny's request: DRWA meets eligibility requirements of 43 CFR Part 404-404.6, 404.7 and addresses the priority items in 404.13.

-September 2010-Email from James Todd (Bartwest) to Tod: Congratulations to DRWA on getting approval for Feasibility Study from BOR.

-September 2010-Letter from Stephanie Hellekson to DRWA – DRWA receiving Feasibility Funding

-September 2010-Email from Brian Milne to Stephanie Hellekson: comments on POS and agreement.

-September 2010-Email from Stephanie Hellekson to DRWA: Lenny and Stephanie are working through process of putting together complete cooperative agreement for funding received.

-November 2010-Email from Stephanie Hellekson to Brian Milne: Attachment with edits for POS

-December 2010-Email from Stephanie Hellekson to Brian Milne: Finalizing agreement and POS

-December 2010-Email from Brian Milne to Stephanie Hellekson: Milestones/tasks outlined

-June 2011-Update from Brian Milne showing work items completed/partially completed

-June 2011-Revised Design Parameters from Jed Kirkland

- July 2011-Scheduled meeting to discuss: Updated Service Map, Review Source Water/Pipeline Model, Discuss NEPA Compliance, Cost Estimates, Economics, Updated Schedule
- July 2011-VE Study scheduling discussion
- September 2011-Lenny D./BOR used North Central as example to follow for Feasibility Study
- November 2011-DRWA needs meeting to determine target for project that “is not moving”
- December 2011-Stephanie Micek provided Project Update Summary Notes
- December 2011-DRWA letter to BOR narrowing alternatives (12/16/11)
- January 2012-Meeting: VE Study Informational Needs
- January 2012-VE Study scheduled week of February 13, 2012.
- January 2012-DRWA rec'd BOR D&S CMP 09-03 from Lenny Duberstein
- January 2012-Draft Feasibility Study submitted to BOR (1/31/12)
- February 2012-DRWA Study Estimate received from Stephanie Micek
- February 2012-VE Study (2/13/12-2/17/12)
- February 2012-Interstate sent cost estimates to BOR for review/NO response (2/15/12)
- April 2012-Phone call with Steve Piper to discuss Social and Economic Evaluation for Feasibility Report
- April 2012-Received VE study final report (4/4/12)
- April 2012-Draft Accountability Report (4/23/12)
- April 2012-Email from Dan Stremcha (BOR) to DRWA: BOR Feasibility Study Expectations (4/23/12)—After VE and after we already turned in Draft Feasibility 1/31/12

- April 2012-Email from Steve Piper to Stephanie Micek: In order to complete a P&G economic analysis information is needed.
- April 2012-Email from Dan Stremcha to Interstate Engineering: Comments on Accountability Report
- April 2012-Email from Dan Stremcha to DRWA: Status summary needed that defines the following for the subject project – Description of Project, Cost, Schedule, Upcoming Milestones, Issues needing resolution, Next Steps
- May 2012-2<sup>nd</sup> Draft Accountability Report
- May 2012-Final DRWA Accountability Report (5/18/12)
- June 2012-DRWA Request for Additional Funds
- September 2012-DEC review scheduled for October 2012
- September 2012-Completed Feasibility Report (9/21/12)
- October 2012-Meeting with DRWA and BOR: Next Steps/Funding Request
- October 2012-DEC Review started with site visits (10/22/12)
- November 2012-Received DEC Review from BOR (11/28/12)
- We received the DEC Review Determination back and, as expected, our project was not being considered satisfactory (even though we were following the guidelines of the BOR office).  
The Dry-Redwater Regional Water Authority (DRWA) Appraisal Level Report was accepted by BOR and qualified DRWA for matching funds as well as a path to Federal Authorization (at least, this was what we were led to believe).
- For most of 2013 the BOR would not respond to our inquiries, nor provide any information on the status of our application. **It was not until October 28, 2013** and various inquiries from the Montana Congressional delegation on behalf of the DRWA that Domenick Enzenbacher of the Billings BOR office responded to the DRWA.
- In May of 2014 Domenick and his staff informed the DRWA that instead of the “Interim Feasibility Report the parties had been discussing for nine months, the BOR would now like an “Appraisal Report” written. This effectively takes the DRWA System back TWO steps as an Appraisal Report was written and submitted years ago. Further,

the BOR has now asked for the communities being served by the DRWA System to be scaled back and drastically reduced.

- The BOR had a change in personnel. DRWA was provided a new contact, Gerald Benock. DRWA voiced concerns about being set back multiple steps with an "Appraisal Report". BOR and DRWA agreed upon entering into an MOU. The MOU will help produce a document to be placed as an attachment to the DRWA Feasibility Report. This document will outline improvements not yet completed.
- On April 27, 2015 the Bureau of Reclamation entered into an MOU with Dry-Redwater for the purpose of completing a DRWA Feasibility Summary Report. The objective of the MOU is to define the current state of the feasibility study and the additional level of effort needed to revise the study technically in order to meet the requirements of the Rural Water Supply Program. BOR de-obligated their \$250,000 in funding they had set aside for Dry-Redwater when entering into the MOU, because the Feasibility Summary Report was supposed to be a cost effective way for DRWA to work together and share costs with Reclamation to create a summary document that could be shelved at BOR in place of a Concluding Report. Dry-Redwater was told that BOR did not want to write a Concluding Report, but rather wanted a document that would list what has already been done, and what additional work will be need to be completed in the eyes of BOR. BOR wanted a Feasibility Summary Report so, in the event that funding became available later, BOR and DRWA would easily be able to pick up where the project was left off. Dry-Redwater was told by BOR that a Concluding Report would permanently close the DRWA program at BOR, and the entire process would have to be started over for DRWA to continue.
- In May 2016, Dry-Redwater submitted their draft version of the Feasibility Summary Report for review (18 pages). The document appropriately follows the guidelines from the MOU. In addition, it follows the outline indicated in Exhibit A of the MOU. In June 2016, Gerald Benock from BOR sent one page of an example of Reclamation's Feasibility Summary Report Review and suggested Dry-Redwater go back and re-work how the DRWA Feasibility Summary Report was written to be more in line with what BOR had in mind that they would like to see. Given the numerous times DRWA has been asked to re-study, re-work, re-organize, and re-do; Dry-Redwater is a bit apprehensive about doing our part all over again. In addition, DRWA understands the MOU process is to be a joint effort: DRWA creates a Feasibility Summary Report, BOR reviews the DRWA version of the report, BOR adds additional details where they would like them, and then both parties review the document, and agree on a final executed Summary Report.
- August 12, 2106 Instead, and out of the blue, Benock sent an email to DRWA stating, "For your information MTAO is in process of drafting a Concluding Report on the Dry-Redwater Regional Water System Feasibility Study as required under Reclamation's

Rural Water Supply Program which is sunseting this fiscal year. This document will be based on the September 2012 DRWSFS (Feasibility Study) since that is the only document Reclamation has reviewed and evaluated.”

- November, 2016 Even though the DRWA was under a legally binding MOU with the Bureau of Reclamation, all communication **ceased and a Concluding Report dated September 2016 was sent to DRWA.**
- The Rural Water Supply Act of 2006 sunset in September 2016. Dry-Redwater requested a meeting and traveled to Billings to meet with Mike Ryan, Great Plains Regional Director, in November 2016. Unfortunately, Dry-Redwater was informed that BOR no longer has any authority to work with Regional Water Systems following the sunset. We find this simply ridiculous as Reclamation worked with DRWA well before the Rural Water Supply Act was instigated and zero rural water projects were approved by Reclamation under the Rural Water Supply Act. How can all of this time and money (federal and state) be wasted?

#### **SUMMARY of TIMELINE ACTIONS**

Since the acceptance of the Appraisal Report DRWA has only seen increasing frustrations. DRWA finds it extremely difficult to follow the guidelines of the Rural Water Supply Act of 2006 as the final rules are not yet written. When the Rural Water Supply Act of 2006 was established DRWA began down a path of continuing studies rather than working steadily toward authorization.

In addition to the recurring changes and reinterpretations of the Rural Water Supply Act of 2006, DRWA has had to deal with roughly seven changes in staffing at the BOR office in Billings. This has directly led to reinterpretations of the processes DRWA is expected to follow. Consequently, DRWA has more than overspent our matching budget in an attempt to comply with the unwritten rules of the Rural Water Supply Act of 2006 and the ever-changing decision in the Billings BOR office.

DRWA has completed an assortment of Feasibility Studies following guidelines provided by BOR. Each time a Feasibility Study is completed it seems a new interpretation of the requirements is determined and we are sent back to start the process all over again. We completed what we thought was the concluding Feasibility Study in September 2012. However the BOR continues to saddle the DRWA with additional and costly reports. After more than \$4 million and ten years of work on this project we need to spend the money on laying pipe and servicing our citizens. Therefore we rely on the support of Congress.



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May 10, 2017

Senator Tom Udall  
531 Hart Senate Office Building  
Washington, D.C. 20510

Senator Martin Heinrich  
303 Hart Senate Office Building  
Washington, D.C. 20510

RE: New Mexico Drought Preparedness Act

Dear Senator Udall and Senator Heinrich:

The Nature Conservancy writes to express our support for the New Mexico Drought Preparedness Act of 2017 (S. 1012), because we believe it will strengthen New Mexico's water security and resiliency in the face of drought.

After witnessing the impacts of more than a decade-long drought, westerners are acutely aware of the aridity of the American West. While we recognize that water scarcity is felt with the greatest urgency at the local level, the connectivity of water requires solutions that work at a basin scale and balance the needs of cities, farms, and nature. Although states have the primary authority to manage water resources, the federal government has a significant role to play in advancing innovative, collaborative, and widely-supported water conservation measures and creative-financing to meet water demands and protect and restore healthy river flows.

The New Mexico Drought Preparedness Act of 2017 accomplishes this by providing vital funding and program authorizations that enable urban, agricultural, and ecosystem sectors to thrive in a shared water system. Key provisions of the legislation include:

- Section 3, which establishes a voluntary water acquisition program across New Mexico to be managed by the Bureau of Reclamation, in coordination with other federal agencies, the state, and water districts. The program aims to benefit fish and wildlife, water quality, and river ecosystem restoration, along with the stewardship and conservation of working lands, water, and watersheds. Incentives and cost-shares are available to water districts and producers to improve irrigation systems and efficiency and to establish water leasing programs. Voluntary water leasing is a collaborative, flexible solution for achieving substantial benefits during times of drought and generating a financial return for farmers while preserving agricultural water rights and rural economies in perpetuity.
- Section 8, which reauthorizes SECURE and strengthens WaterSMART to plan for drought impacts. The bill expands the scope of grants to include planning for the impacts of drought. It also provides discretionary authority for the Commissioner to waive cost-share requirements for emergency drought situations.

- Section 9, which reauthorizes the Reclamation States Emergency Drought Relief Act, provides the Bureau of Reclamation authority to fund temporary water transfers, water banking, and other structural and non-structural measures to stabilize river flows and improve the efficiency and reliability of water supplies. The Reclamation States Emergency Drought Relief Act also provides a broad array of drought relief to states, tribes, and water districts. At the request of states or tribes, the Drought Relief Act authorizes the Bureau of Reclamation to help prepare and implement drought contingency plans, designed to prevent or mitigate the adverse effects of drought. These plans can draw on innovative and flexible mechanisms such as water banks, water conservation, use of Reclamation's project facilities to store and convey non-project water, and water supplies for fish and wildlife. S. 1012 would extend authorization through 2022.

The bill also authorizes additional programs and studies focused on improving flexibility, efficiency, and optimization of water supply, storage, and delivery through reservoir management and reoperation in the Upper Rio Grande Basin. In consultation with water users and tribes, reservoirs constructed and authorized 50 to 100 years ago would be fully reviewed to meet current needs, including environmental purposes, and future conditions. Modernizing water management would benefit all water users by enhancing water productivity, conservation, and drought resiliency while reducing conflict over water for ESA-listed species.

We also request consideration of some modest changes to the bill including:

- In Section 3:
  - Insert a new subsection 3(c) as follows: To assist in developing and administering the program, the Secretary may provide funds to a federally established nonprofit entity with particular expertise in western water transactions including funding to develop a comprehensive strategic plan and budget to help inform the long-term goals and activities of the program; and award grants for associated program research, implementation and evaluation.
  - Insert a new subsection 3(e) as follows: The Secretary can enter into one or more interagency agreements with the Secretary of State, Secretary of Army and Secretary of Agriculture to direct participation and transfer of funds to design, implement, and evaluate water acquisition programs for the U.S. International Boundary and Water Commission, U.S. Army Corps of Engineers and Natural Resource Conservation Services and/or Farm Service Agency.
- In subsection 7(b):
  - Strike "pumps," in paragraph (1);
  - Modify paragraph (2) so it reads "*the installation of drought-relief groundwater wells for Indian tribes, for environmental purposes, and in wildlife refuges ~~and other areas~~*" by:
    - Adding "for environmental purposes" to the list of purposes for which drought-relief groundwater wells may be installed in paragraph (2); and
    - Striking "and other areas" in paragraph (2); and
  - To avoid having water saved through the important efficiency activities listed in Section 7(b) be used for purposes other than the environmental benefits for which they are intended, the committee should add a subsection (c) barring such practice. One example of this kind of safety clause is in §9504 of the SECURE Water Act, 42 U.S.C. §10364(a)(3)(B), which directs the Secretary of the Interior not to: "provide a

grant, or enter into an agreement, for an improvement to conserve irrigation water unless the eligible applicant agrees not— (i) to use any associated water savings to increase the total irrigated acreage of the eligible applicant; or (ii) to otherwise increase the consumptive use of water in the operation of the eligible applicant, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.”

- In Section 9, in addition to reauthorizing Reclamation’s Emergency Drought Relief Authority funding, the Conservancy strongly supports additional language to:
  - raise the cap on appropriations from \$90 to \$110 million; and
  - amend the Act to reauthorize Reclamation’s authorities in Title 1, by extending to the year 2022 the date in 40 U.S.C. §2214(c). Title 1 allows Reclamation to purchase water, make its project water available, lease water or make funding available to lease water, and to participate in state water banks on a temporary basis during drought, including specifically for protecting or restoring fish and wildlife resources, 2211(c), 2212(d) and 2213. This authority has proved critical around the West in maintaining endangered species populations during drought.
- The Conservancy strongly supports the Natural Resources Conservation Service’s Regional Conservation Partnership Program, created in the 2012 Farm Bill and has been instrumental in establishing these partnerships in the West, including, for example, in the Gunnison River Basin in Colorado. These partnerships have proven to be an important tool to fund “water quantity conservation, restoration, or enhancement projects relating to surface water and groundwater resources, including the conversion of irrigated cropland to the production of less water-intensive agricultural commodities or dryland farming; or irrigation system improvement and irrigation efficiency enhancement...” as well as drought mitigation, water retention, and habitat conservation, restoration & enhancement. Given the current broad array of covered activities, the Conservancy asks that the text in Section 11 regarding the new “special conservation initiatives” be clarified so as to identify what new initiatives would be created that are not already covered by existing statutory authorities.

S.1012 focuses on sustainable solutions that optimize supply and benefits for cities, agriculture and nature across multiple scales from districts to river basins. For these reasons, we support S.1012.

Thank you for your leadership in addressing drought in New Mexico and throughout the Western United States.

Sincerely,



Terry Sullivan, State Director  
 Email: [tsullivan@tnc.org](mailto:tsullivan@tnc.org)  
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Written Testimony

Of

Governor Peter Garcia, Jr.

Ohkay Owingeh  
PO Box 1099  
Ohkay Owingeh, New Mexico 87566

To

Senate Energy and Natural Resources Committee  
Subcommittee on Energy

June 27, 2017

Chairman Risch, Ranking Member Manchin, Senator Heinrich and Members of the Subcommittee, thank you for the opportunity to submit testimony for the record on S. 1012, the New Mexico Drought Preparedness Act of 2017. This is a very important piece of legislation to the Pueblo and people of New Mexico where we've been dealing with unrelenting drought compounded by the effects of climate change. I am providing these comments on behalf of Ohkay Owingeh.

Ohkay Owingeh is located 25 miles north of Santa Fe, New Mexico, at the confluence of the Rio Grande and the Rio Chama. The Pueblo Grant is within our ancestral lands. Our people have been diverting water, and capturing rainwater and snowmelt runoff for crops for more than 1000 years. Archeologists have found our ancestors' irrigated agricultural fields dating to the 12<sup>th</sup> century. Our name, Ohkay Owingeh, is Tewa for "place of the strong people", a truly fitting name to be sure. Ohkay Owingeh is the home of the leader of the Pueblo revolt of 1680, Po'pay. Today, Po'pay is one of only seven Native Americans honored in the U.S. Capitol with a statue in the National Statuary Hall Collection. To say that water is central to Ohkay Owingeh as a people is an understatement.

We strongly support S. 1012 and ask Congress to quickly pass this important legislation. Furthermore, the inclusion of the Rio Grande Pueblo Irrigation Infrastructure Improvement Act, which was last authorized in 2009 by the Omnibus Public Land Management Act, in this bill necessitates quick action.

For centuries the Pueblo was able to rely upon a clean, and sufficient supply of water. Population increases, an increasing demand for water by our neighbors, degraded water quality, and drought have made our water supplies less reliable. Our ability to maintain our homeland for Ohkay Owingeh people for the future depends on our capacity to protect our culture and livelihood; maintain our traditions and ceremonies; protect our

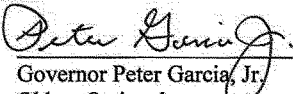
rivers, wetlands and lands; and develop our economy. A healthy homeland can be maintained only through a reliable and adequate supply of safe and clean water that is protected by federal law. Passage of this legislation is vital to the people of Ohkay Owingeh because it is an important step toward our goal of a sustainable homeland. The funding provided by this bill will facilitate efficient water use and promote conservation measures based on sound, long-term water management projects. Repairing Pueblo irrigation infrastructure will lead to better water conservation, extend available water supplies, increase agricultural productivity and help better preserve our culture.

Our lands remain parched from the current drought. It is imperative that Ohkay Owingeh has effective, reliable irrigation for economic development both for the Pueblo and for our neighbors, the non-Indian communities that surround us. This bill will help secure a sustainable water supply for our Pueblo farmers and is an inclusive approach to water management.

Section 4 of this bill, which reauthorizes the Rio Grande Pueblo Irrigation Infrastructure Improvement Act, begins to address the terrible condition of irrigation infrastructure here in the State. Unfortunately, reauthorization of this Act will not fix all of the problems that have been allowed to worsen with years of deferred maintenance costs and severe federal budget cuts. However, passage of bills like this one is a good first step.

Water is essential to life for all of us. For Ohkay Owingeh, water is woven through every part of our lives – it is necessary for our ceremonies, is a part of our traditions, and is central to the Pueblo's ability to achieve economic self-sufficiency. Together with legislation such as S. 1012 and our ongoing water rights settlement negotiations, our people will have a better chance at a safe, clean, reliable and sufficient source of water for the future.

Thank you for this opportunity to provide testimony on behalf of Ohkay Owingeh  
for the record.

  
Governor Peter Garcia, Jr.  
Ohkay Owingeh

**J. Leroy Arquero**  
Governor



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**Statement of Governor J. Leroy Arquero  
Pueblo de Cochiti  
Before the  
Senate Committee on Energy and Natural Resources  
on  
S. 1936  
New Mexico Drought Preparedness Act of 2015**

October 22, 2015

Chairman Murkowski, Ranking Member Cantwell and Members of the Committee, I am writing as Governor, Pueblo de Cochiti, to thank you for holding this hearing and providing us with the opportunity to share our concerns regarding the New Mexico Drought Preparedness Act of 2015, S. 1936.

The testifying witnesses in this hearing noted that our Pueblo has experienced substantial harms from adverse impacts of the Cochiti Dam and called for partnership and consent of the Pueblo for any changes to the existing authorization. Adrian Ogelsby, Vice-Chair of the Middle Rio Grande Conservancy District stated, "[w]e fully recognize the potential impacts that any changes to the Cochiti authorization may have to Cochiti Pueblo and we fully support any action necessary to address their concerns. This is especially important given the physical and social damage that the construction of Cochiti Dam inflicted upon Cochiti Pueblo."

The original flood control easement and the modification to add and maintain a permanent pool to the Cochiti reservoir have imposed enormous cultural, environmental and financial costs upon us. Chairman Murkowski's opening statement recognized the potential negative impacts that drought mitigation can have on local communities. Ranking Member Cantwell also pointed out that these measures can create long-term problems with costly impacts. The Pueblo profoundly understands these impacts from our experience with the harms caused by the Cochiti Dam and Reservoir, which include irreparable cultural losses, as well as economic and environmental impacts from which we are still recovering.

In light of our experience, the Pueblo is deeply concerned by the suggestions of changing uses to and demands on the Cochiti Dam and Reservoir. The Pueblo is grateful to Senators Udall and Heinrich for including terms in S. 1936 to fund a feasibility study and we appreciate the

Statement of Governor J. Leroy Arquerio  
 Pueblo de Cochiti  
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provisions in Section 5(e) that require the consent of the Pueblo de Cochiti regarding the effects of any proposed deviation of the operations of Cochiti reservoir on the Pueblo. The testimony of Department of Interior Deputy Secretary Michael Connor also expressed support for partnership with the Pueblo in carrying out the feasibility study. He stated, "The Department supports a feasibility study in partnership with the Army Corps of Engineers and Cochiti Pueblo to assess maximized operational flexibilities if the concerns of Cochiti Pueblo are addressed."

As the Committee considers S. 1936, the Pueblo urges the Committee to lend its full support for a feasibility study conducted in partnership with the Pueblo and the inclusion of Section 5(e) terms requiring our consent for any changes in the operations of Cochiti Dam. The feasibility study represents a critical preliminary step to determine the effects on the Pueblo of any such change in operations. As Ranking Member Cantwell stressed in her opening remarks, long-term, comprehensive plans must be devised that focus on resiliency and coordinated planning. As for the effects on the Pueblo caused by the operations of Cochiti Dam and Reservoir, such a coordinated planning framework involves not only addressing impacts, but also obtaining consensus and approval of the Pueblo. Moreover, that framework must clarify that any new authorization of uses of Cochiti Dam will open opportunities for additional investments into Cochiti Pueblo's existing mitigation infrastructure, provide for new and sustained resources to build capacity for managing mitigation systems, include provisions governing the United States' liability for any damages associated with new uses and establish mechanisms under which the Pueblo may obtain revenues to compensate for both existing and new responsibilities to the users and beneficiaries of the Cochiti Reservoir.

As discussed in the hearing, the feasibility study in Section 5 and the balance of the proposed legislation reflects a concern for the endangered Rio Grande silvery minnow (and the federal agencies' desire for pulse releases from Cochiti Reservoir to aid in its spawning) and enhanced long term water storage capacity for the Middle Rio Grande Pueblo tribes of New Mexico (Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia and Isleta) for irrigation purposes. Yet, Cochiti Pueblo has no resources available to address the proposals for extra water storage or changes in water release schedules either to facilitate protection of the silvery minnow or for irrigation water storage for the Middle Rio Grande Pueblos or the Middle Rio Grande Conservation District (MRCD).

We have been engaged in dialogue with the U.S. Army Corps of Engineers and other federal agencies for several years seeking to establish mechanisms under which the Pueblo may generate revenues related to current use of the Cochiti Reservoir, including, for instance, uses related to the approximately 600,000 recreational users who come to our lands each year to access Cochiti Lake. (The Pueblo bears responsibilities for trash, wear and tear on our roads and law enforcement obligations with no income to offset those costs and burdens.) To date, these discussions have not resulted in the establishment of a revenue-sharing agreement or other mechanism to offset costs, in part due to the need for legislation authorizing the Pueblo's assumption of program and administrative responsibilities and receiving the corresponding funding or user fees. The Pueblo has indicated openness to certain partnerships with the federal agencies, but administrative, fiscal and legal hurdles have sandbagged those efforts. We

Statement of Governor J. Leroy Arquero  
 Pueblo de Cochiti  
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encourage the Committee to be sensitive to implementation obstacles when considering drought mitigation legislation.

With respect to S. 1936, the Pueblo also calls to your attention the following concerns, which we believe must be carefully examined and addressed as the Committee considers this proposed legislation:

1. We are concerned about adverse environmental impact from increased water storage on the upstream delta of the Rio Grande upstream from Cochiti Reservoir. Storing more water in the Reservoir for purposes such as conservation or irrigation for extended periods will cause extensive environmental harm in that location as documented in the "Cochiti Reservoir Reregulation Interagency Biological Report" issued June 30, 1993. We have not seen any data modifying the conclusions of that report or identifying any method for mitigating the upstream environmental harms extended water storage at the reservoir would cause.

2. The Cochiti Dam is an earth-filled dam. If more water is stored in the reservoir for a prolonged period, this increases saturation of the earth fill in the Dam's structure and increases the risk of some future dam collapse.

3. The Pueblo and the United States entered into a settlement agreement regarding the seepage problem caused by the reservoir that was approved by the congress in 1992. This settlement agreement addressed damages to the Pueblo de Cochiti's agricultural fields in a defined area caused by seepage from the Dam as the reservoir project existed at that time. As part of that settlement, the Army Corps of Engineers installed an underground, gravity-based drainage system for our agricultural fields located southwest of the dam. The drainage system was designed to accommodate maintenance of a 1,200 surface acre permanent pool and the periodic storage and release regime authorized by the flood control legislation existing at that time.

The proposed long-term storage of other waters is a new development that could overwhelm the drainage system and cause new damages to Pueblo agriculture and other aspects of Pueblo life. The Pueblo requests that any feasibility studies and comprehensive planning process will proceed only with the full participation and consent of the Pueblo and will consider such measures as are necessary to protect the Pueblo from adverse impacts. If implementation of a new program, however, results in damages to the Pueblo, the express terms of any authorizing legislation should ensure that federal funding is available to the Pueblo in order to identify, analyze and cure any problems that may arise and reverse the damages caused by the new conditions. The Pueblo requests that S. 1936 include specific terms governing liability and compensation for damages to the Pueblo's culture, economy, operational and administrative costs and other interests. Such language could be in the form of a proviso stating that the Pueblo shall be eligible to receive federal funding to compensate the Pueblo for any and all costs and damages caused by the implementation of this Act.

4. We have heard various estimates of the quantity of additional waters that some agencies (in particular the U.S. Fish and Wildlife Service, the Middle Rio Grande Conservancy

Statement of Governor J. Leroy Arquerio  
 Pueblo de Cochiti  
 Page 4

District, and some of the other Pueblos having rights to prior and paramount irrigation waters from the Rio Grande) would like to see stored at the Cochiti Reservoir. Those estimates have contemplated additional water storage of up to 60,000 additional acre feet for conservation storage for periods that might include 60 to 90 days or longer. The greater the amount of water held in the reservoir and the longer its duration, the more impact this would have on the first three factors listed above.

5. We are pleased that the Corps of Engineers recognizes that it has no discretion to authorize deviations from the existing authorized uses of Cochiti Reservoir or the waters contained therein, but that recognition only came after many years of negotiation with the Corps. The Pueblo's dealings with the Corps have been very costly because of the Pueblo's need to engage legal counsel and experts in connection with those dealings. The Pueblo has limited resources because it is not a gaming tribe. We now have a positive and mutually respectful relationship with the Corps. Despite our positive experience with the Corps, the Pueblo has great concern as S. 1936 proposes to add yet another federal agency, the Bureau of Reclamation (BOR), in the formal management structure regarding Cochiti Reservoir uses and water release schedules. Based on our experience, adding a new federal actor will cost the Pueblo a great deal of time and money to protect its rights, educate the agency, build relationships and effectively coordinate with BOR. The Pueblo has had a positive meeting with the BOR and we have shared our concerns. We appreciate that the BOR listened and seemed to understand those concerns. Nonetheless, we oppose adding the new layer of federal bureaucracy in the management of Cochiti Reservoir. In that vein, we wish to make it clearly understood by this Committee that the U.S. Fish and Wildlife Service, one of the principle drivers of proposed changes in use of the reservoir, has never consulted with the Pueblo to hear our views regarding any of these matters even though Executive Order 13175 requires all federal agencies to engage in regular and meaningful government-to-government consultation with tribal officials in the development of federal policies that have tribal implications.

6. No one has identified a source of water that would even be available on a sustained basis for the benefit of the Rio Grande silvery minnow, for which additional water storage is proposed. With the exception of prior and paramount water the Middle Rio Grande Pueblos seek to store at Cochiti Reservoir, we believe the experience of the prior five year temporary deviation experiment by the Corp for purposes of benefitting the minnow raises serious questions about whether there would be much water actually available for future long term storage at the reservoir for any purpose.

7. It is now well settled that the only permitted uses which the Corps is allowed on the Pueblo's land are those set out in the existing authorization legislation are flood control, sediment control, recreational enhancement in the lake and fish and wildlife enhancement. We note in particular that the reference to Fish and Wildlife enhancement in the above provision relates to Fish and Wildlife enhancement at the reservoir not at some other location upstream or downstream. Any ambiguity over the meaning of these words in our easement agreement must be construed and resolved in our favor based on longstanding canons of interpretation. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 750 (1985).



Statement of Governor J. Leroy Arquero  
Pueblo de Cochiti  
Page 5

8. The Pueblo in the past has agreed to temporary deviations of the water release schedule to accommodate various interests. On further reflection, the Pueblo is not comfortable with continuing those arrangements as they are not legally authorized and present some dangers to the Pueblo. Neither the Corps nor the Pueblo have the legal authority to unilaterally alter the existing congressionally authorized uses and the Pueblo does not at this time support any such legislative change.

The Pueblo is fully committed to work with the Committee and with Senators Heinrich and Udall to establish a comprehensive plan for a coordinated framework to address the many interests and concerns associated with the Cochiti Dam and Reservoir. Given the concentrated impacts of any new authorization on the Pueblo, we count on that framework including mechanisms to address impacts and to provide appropriate new investments into Cochiti's existing mitigation infrastructure, provide for sustained resources to build capacity to managing mitigation systems, and establish terms governing the United States' liability damages associated with new uses. The Pueblo further hopes that careful planning will reveal the equity of and necessity for authority under which the Pueblo may obtain revenues to compensate for the Pueblo's existing and new responsibilities associated with the Cochiti reservoir.

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**Office of the Governor**

Written Testimony

Of

Governor Anthony Ortiz  
Pueblo of San Felipe  
San Felipe, New Mexico

To

Senate Energy and Natural Resources Committee  
Subcommittee on Energy

June 27, 2017

Chairman Risch, Ranking Member Manchin, Senator Heinrich and Members of the Subcommittee, Kuwaitis. Hello. Thank you for the opportunity to submit testimony for the record on S. 1012, the New Mexico Drought Preparedness Act of 2017. This is a very important piece of legislation to the Pueblo and people of New Mexico where we've been dealing with unrelenting drought compounded by the effects of climate change.

The Pueblo of San Felipe is one of the most culturally conservative of New Mexico's 19 Pueblos. The Pueblo is located about half way between Albuquerque (about 30 miles to the north) and Santa Fe (about 40 miles to the south) at the foot of the Mesa de Tamita. We have existed on this land since time immemorial. Our traditions, land, and culture are who we are as Pueblo Peoples and access to water is paramount to our survival.

Section 4 of this bill contains reauthorization of the Rio Grande Pueblo Irrigation Infrastructure Improvement Act, which was last authorized in 2009 by the Omnibus Public Land Management Act. Through its authorization, Congress directed the Bureau of Reclamation to conduct a study and develop a list of recommended projects to repair, rehabilitate, or reconstruct irrigation and drainage facilities for the New Mexico Rio Grande Pueblos. Projects that are vital to the people of the Pueblo of San Felipe. The funding provided by this bill will address efficiency and conservation measures for good, long-term water management projects. Repairing Pueblo irrigation infrastructure will lead to better water conservation, extend available water supplies, increase agricultural productivity and help better preserve our culture.

Our lands remain parched from the current drought, which has significantly stressed our natural resources and those that depend on them for their livelihoods such as tribal farmers and ranchers. This bill will help secure a sustainable water supply for our Pueblo farmers and is an

inclusive approach to water management that includes innovative ideas such as voluntary water leasing programs.

S. 1012 is important to the Pueblo of San Felipe and the people of the State of New Mexico. We urge Congress to pass this important piece of legislation.

Who:wee'eh (Thank you).

Testimony of the Theodore Roosevelt Conservation Partnership

Subcommittee on Water and Power  
Energy and Natural Resources Committee  
United States Senate

S. 1012 New Mexico Drought Preparedness Act  
S 677 Water Supply Permitting Coordination Act

May 10, 2017

The Theodore Roosevelt Conservation Partnership (TRCP) is a coalition-building organization that seeks to unite and amplify the voices of sportsmen and women around important federal issues that affect fish and wildlife habitat, funding for conservation programs, and sportsmen's access. Our mission is to guarantee all Americans quality places to hunt and fish, and we are made up of 54 national partner organizations.

Drought is a constant threat across the West, so maintaining the existing authorities for Reclamation to assist with drought response is critical. For example, the Colorado River Basin has been in drought for most of the last 17 years. Given the region's growing population, the long term imbalance in the Basin between water supply and demand, and the fact that the large reservoirs in the basin, Lakes Mead and Powell, are still only half full, 2017's healthy precipitation is not cause to lower the red flags. This wet year has deferred, not eliminated the likelihood of a shortage declaration. As a result, anglers, hunters, and conservationists, along with irrigators, urban water suppliers, and others, continue to work on drought contingency plans and other strategies to keep the rivers flowing, the fields producing and the cities strong.

Several sections of S. 1012 amend West-wide or national programs. Our comments relate to these sections of the bill.

Following our comments on S. 1012, we have also included brief comments on S. 677, the Water Supply Permitting Coordination Act.

#### **Section 7, Emergency Funding**

The TRCP strongly supports the goal of this section, which makes financial assistance available, including under the Emergency Drought Relief Act and Food Security Act of 1985 to a list of 15 different kinds of projects that address drought impacts to water supplies and other water-related crises, or that help water suppliers engaged in collaborative processes to restore the environment, including at the basin level. Some TRCP partner organizations have worked on just these sorts of collaborative efforts at the local and basin level that address multiple purposes, including for cities and irrigators, but also restoration and protection of rivers and riparian habitat that benefit fish and wildlife and outdoor recreation. From the 246,000 square miles of the Colorado River Basin to the 32 mile long Fraser River in Grand County Colorado (a Colorado River tributary), these efforts lead to improved results for all parties and build strong community in the process.

The TRCP would ask that, to avoid unsustainable ground water pumping during drought, which some emergency drought relief funds have unfortunately allowed to occur in the past, the committee adopt an amendment to:

- a. Delete the word *pumps* in subparagraph (1) of subsection 7(b), and
- b. Delete the phrase *and other areas* in subparagraph (2) of subsection 7(b).

In addition, to avoid having water saved through the important efficiency activities listed in Section 7(b) be used for purposes other than the environmental benefits for which they are intended, the committee should add a subsection (c) barring such practice. One example of this kind of safety

clause is in §9504 of the SECURE Water Act, 42 USC 10364(a)(3)(B), which directs the Secretary of the Interior not to:

provide a grant, or enter into an agreement, for an improvement to conserve irrigation water unless the eligible applicant agrees not—

(i) to use any associated water savings to increase the total irrigated acreage of the eligible applicant; or

(ii) to otherwise increase the consumptive use of water in the operation of the eligible applicant, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.

#### **Section 8, SECURE Reauthorization**

The TRCP supports reauthorization of the SECURE Water Act. Through its Basin Study and waterSMART grant programs, this Act has been a critical component of the efforts to restore water supply and demand balance in the Colorado River Basin and elsewhere in the West. Grants issued through the WaterSMART Program have been a powerful tool for conserving water through collaborative local projects. The 243 grants issued from 2010 to 2015 save an estimated 557,000 acre-feet of water per year—enough to provide water for more than 2.2 million people.

#### **Section 9, Emergency Drought Relief Act Reauthorization**

The TRCP strongly supports reauthorization of Reclamation's Emergency Drought Relief Authority funding. With less than \$12 million left under the current appropriation, the TRCP urges the committee also to raise the cap on appropriations from \$90 to \$110 million.

In addition, the TRCP encourages the committee to amend the act also to reauthorize Reclamation's authorities in Title 1, by extending the date in 40 U.S.C. §2214(c) to 2022. Title 1 allows Reclamation to purchase water, make its project water available, lease water or make funding available to lease water and to participate in state water banks on a temporary basis during drought, including specifically for protecting or restoring fish and wildlife resources, 2211(c), 2212(d) and 2213. This authority has proved critical around the west in maintaining endangered species populations during drought.

#### **Sec. 11. Regional Conservation Partnership Program**

The TRCP strongly supports the Natural Resources Conservation Service's Regional Conservation Partnership Program, created in the 2012 Farm Bill. Several of our member organizations have been instrumental in establishing these partnerships in the West, including, for example, in the Gunnison River Basin in Colorado. These partnerships have proven to be an important tool to fund "water quantity conservation, restoration, or enhancement projects relating to surface water and groundwater resources, including the conversion of irrigated cropland to the production of less water-intensive agricultural commodities or dryland farming; or irrigation system improvement and irrigation efficiency enhancement..." as well as drought mitigation, water retention, and habitat

conservation, restoration & enhancement. Given the current broad array of covered activities, the TRCP asks that the committee clarify what the new “special conservation initiatives” that the bill adds would include that are not covered through the existing statutory authorities.

#### **Sec. 12. Conservation Reserve Program**

The Conservation Reserve Program (CRP), 16 USC §3831, has proven both important in preserving our nation’s agricultural lands. CRP ensures an “equitable balance” among the conservation purposes of soil erosion, water quality, and wildlife habitat. 16 USC §3831(i). Within CRP, there is the Conservation Reserve Enhancement Program (CREP), through which the Farm Service Agency (FSA) partners with States who determine which of their owners may be compensated for removing environmentally sensitive lands from production.

TRCP supports both CRP and CREP. We believe that these programs could be useful tools to address water quantity concerns, promote water conservation and help mitigate or avoid drought impacts in the arid and semi-arid West. TRCP looks forward to working with the sponsors and committee members to find ways of achieving those goals without adversely affecting the other aspects of these programs.

#### **S. 677, the Water Supply Permitting Coordination Act**

The TRCP does not support S. 677, the Water Supply Permitting Coordination Act. We believe that committee members support western water interests in finding broad-based, collaborative solutions to water scarcity, such as parties have developed in the Yakima and Upper Colorado River watersheds. S. 677, by making Reclamation the lead agency for all surface water storage projects in Reclamation states, includes ones where Reclamation would otherwise have no involvement, by creating potentially unreasonable timelines, and by putting in place a framework different from the one that Congress recently enacted, will work against this goal.

As part of the Congress passed the Fixing America’s Surface Transportation Act in 2015. The FAST Act included Title XLI, to streamline and coordinate federal agency permitting for major capital projects, defined as those costing \$200 million or more, that need a federal permit, including water storage projects. The TRCP supports the permit streamlining and coordination required in the FAST Act and would encourage the committee to expand that approach to other surface water storage projects, rather than establish a new process different from that in the FAST Act.





**Steve Moyer,**  
Vice-President of Governmental Affairs

**Laura Ziemer,**  
Senior Counsel and Water Policy Advisor

May 9, 2017

The Honorable Jeff Flake, Chairman  
Subcommittee on Water and Power  
Senate Committee on Energy and Natural Resources

The Honorable Angus S. King, Jr., Ranking Member  
Subcommittee on Water and Power  
Senate Committee on Energy and Natural Resources

**Re: Letter for the Record for the May 10, 2017 Subcommittee Hearing on S. 677 and S. 1012**

Dear Chairman Flake and Ranking Member King:

Thank you for the opportunity to submit for the record the following testimony in response to the Subcommittee's May 10, 2017 hearing on S. 677, "Water Supply Permitting Coordination Act," and S. 1012 "New Mexico Drought Preparedness Act," among other water bills. We will have additional testimony to submit next week after we review other bills at issue in the hearing.

Trout Unlimited (TU) represents more than 150,000 conservation-minded anglers, organized into 385 chapters in 36 state councils. Our mission is to conserve, protect and restore the Nation's trout and salmon fisheries and their watersheds. We have 250 staff spread across America who work with our members and a wide variety of partners – including farmers, ranchers, miners and state and local agencies – to accomplish our mission. TU works on projects that build drought and flood resilience for our rural communities that provide benefits for both agriculture and river health. TU believes that linking investment in natural infrastructure with water infrastructure upgrades is essential in order to reduce inefficiencies and project delays, and maximize benefits, including improved trout habitat and watershed health.

**S. 677, "Water Supply Permitting and Coordination Act:" Section 4(b)'s Timelines for Environmental Compliance Work Against Multi-Stakeholder, Collaborative Solutions to Water Scarcity.**

TU does not support S. 677 because it does not work toward broad-based, collaborative solutions to water scarcity. TU has been a long-term partner in the Yakima and Klamath basin efforts, and our experience in these multi-stakeholder, collaborative, basin-wide processes is that surface water storage is best considered and implemented as one element of a multi-pronged approach or as part of a plan that considers a variety of alternatives. Rather than encouraging cooperative stakeholder processes or providing funding to catalyze cooperative solutions, S. 677's Section 4(b)(4) requires specified deadlines to be met for consulting with cooperating agencies, completing environmental reviews, and determining

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project schedules. Last year in hearings on S.2902, Reclamation testified to the fact that there have been no examples of any Reclamation or USDA-sited surface water storage projects that have been denied construction because of delays associated with project reviews or shortcomings in communication among Reclamation, USDA, or any other state or federal partners. TU's experience is that S. 677 would impose additional burdens on Bureau of Reclamation staff—who are already spread thin—without providing meaningful benefits for addressing water scarcity or drought resilience.

Please bear in mind that Congress passed the Fixing America's Surface Transportation (FAST) Act in 2015. The FAST Act included Title XLI to streamline and coordinate federal agency permitting for major capital projects, defined as those federal-permit projects costing \$200 million or more, including water storage projects. TU supports the permit streamlining and coordination required in the FAST Act and would encourage the Committee to expand the FAST Act's approach to other surface water storage projects, rather than establish a new process.

**S. 1012, "New Mexico Drought Preparedness Act:" TU Supports the Act's Promotion of Thoughtful Drought Response and Preparedness.**

TU has worked with both agricultural and municipal partners on a range of drought response efforts, as well as long-term efforts toward improved drought resiliency. In TU's experience, upgrading aging, century-old irrigation and water delivery infrastructure in the West is an opportunity to build flood and drought resilience through improved water storage and delivery and improved river health. Restoration of watershed function is a sound investment that pays dividends over the long-term. Linking a water infrastructure project with upstream or downstream investments in natural aquatic functioning increases the cost-effectiveness of the project and increases the range of project benefits. Several sections of S. 1012 amend west-wide or national programs which have been important to TU's work with partners on drought response. Below are TU's comments on these sections of the bill.

- **Section 7, Emergency Funding**

TU strongly supports the goal of this section, which makes financial assistance available to 15 different kinds of projects that address drought impacts to water supplies and other water-related crises, or that help water suppliers engaged in collaborative processes to restore the environment, including at the basin level. From the 246,000 square miles of the Colorado River Basin to its small tributaries, these efforts lead to improved results for all parties and build strong community in the process.

Turning to unsustainable ground water pumping during drought exacerbates water scarcity, and ultimately worsens drought impacts over the long term. Some emergency drought relief funds have unfortunately promoted such counter-productive drought response measures in the past. TU requests that the Committee adopt the following amendment to avoid paying for unsustainable groundwater pumping during drought:

- Delete the word *pumps* in subparagraph (1) of subsection 7(b), and
- Delete the phrase *and other areas* in subparagraph (2) of subsection 7(b).

In addition, to avoid having water saved through the important efficiency activities listed in Section 7(b) be used for purposes other than the environmental benefits for which they are intended, the Committee should add a subsection (c) barring such practice. One example of this kind of safety clause is in §9504 of the SECURE Water Act, 42 U.S.C. §10364(a)(3)(B), which directs the Secretary of the Interior not to:

provide a grant, or enter into an agreement, for an improvement to conserve irrigation water unless the eligible applicant agrees not—

- (i) to use any associated water savings to increase the total irrigated acreage of the eligible applicant; or
- (ii) to otherwise increase the consumptive use of water in the operation of the eligible applicant, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.

- **Section 8, SECURE Reauthorization**

TU strongly supports reauthorization of the SECURE Water Act. Through its Basin Study and waterSMART grant programs, this Act has been a critical component of the efforts to restore water supply and demand balance in the Colorado River Basin and elsewhere in the West.

- **Section 9, Emergency Drought Relief Act Reauthorization**

TU strongly supports reauthorization of Reclamation's Emergency Drought Relief Authority funding. With less than \$12 million left under the current appropriation, TU urges the Committee also to raise the cap on appropriations from \$90 to \$110 million. In addition, TU encourages the Committee to amend the Act to reauthorize Reclamation's authorities in Title 1, by extending to the year 2022 the date in 40 U.S.C. §2214(c). Title 1 allows Reclamation to purchase water, make its project water available, lease water or make funding available to lease water, and to participate in state water banks on a temporary basis during drought, including specifically for protecting or restoring fish and wildlife resources, 2211(c), 2212(d) and 2213. This authority has proved critical around the West in maintaining endangered species populations during drought.

- **Sec. 11. Regional Conservation Partnership Program**

TU strongly supports the Natural Resources Conservation Service's Regional Conservation Partnership Program (RCPP), created in the 2012 Farm Bill. TU has partnerships with irrigation districts to implement RCPP's with a drought response focus in several states in the West, including the Gunnison River Basin in Colorado. These partnerships have proven to be an important tool to fund "water quantity conservation, restoration, or enhancement projects relating to surface water and groundwater resources, including the conversion of irrigated cropland to the production of less water-intensive agricultural commodities or dryland farming; or irrigation system improvement and irrigation efficiency enhancement..." as well as drought mitigation, water retention, and habitat conservation, restoration & enhancement. Given the current broad array of covered activities, TU asks that the Committee clarify what the new "special conservation initiatives" that the bill adds are, and clarify whether they are already covered through the existing statutory authorities.

- **Sec. 12. Conservation Reserve Program**

The Conservation Reserve Program (CRP), 16 U.S.C. §3831, has proven both important and useful in preserving our nation's agricultural lands. CRP ensures an "equitable balance" among the conservation

purposes of soil erosion, water quality, and wildlife habitat. 16 U.S.C. §3831(i). Within CRP, there is the Conservation Reserve Enhancement Program (CREP), through which the Farm Service Agency (FSA) partners with States who determine which of their owners may be compensated for removing environmentally sensitive lands from production. TU supports both CRP and CREP. Section 12(a) of S. 1012 would expand CRP conservation priority areas, designated because of "special environmental sensitivities," 16 U.S.C. §3831(f)(1), to include areas whose water quantity is adversely affected as a result of agricultural activities. TU asks the Committee to clarify further that, in this context, "water quantity" impacts relate to adverse environmental effects such as chronic low flows that stress fisheries and riparian systems. This will help ensure that the soil erosion, water quality, and wildlife habitat purposes are not adversely affected, while at the same time appropriately expanding the program to help address water scarcity in the arid West.

Thank you for your time in considering these important issues. Please do not hesitate to contact either of us at [smoyer@tu.org](mailto:smoyer@tu.org) or [lziemer@tu.org](mailto:lziemer@tu.org) if we can be of assistance.

Yours truly,



Steve Moyer,  
Vice-President of Governmental Affairs



Laura Ziemer,  
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